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THE

SCIENCE

OF

LEGISLATION,

FROM THE ITALIAN OF

GAETANO FILANGIERI.

" Ουκ εστιν ὁδεν κρεισσον η νομοι πολεις
" Καλως τιθεντες."

Euripides,—Stobæi Excerpt.
ex Tragæd. Græcis.

VOL. I.

LONDON:

PRINTED FOR THOMAS OSTELL,

By Emery and Adams, Bristol.

1806.

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TO

ROBERT HOLT LEIGH,

Of Whitley, in Lancashire, Esq.

AND ONE OF THE REPRESENTATIVES OF THE BOROUGH OF WIGAN.

DEAR SIR,

IF I were to ask myself, in the words of Catullus,

Cui dono—novum libellum?

with Catullus I should answer,

—— Tibi, namque tu solebas
Meas esse aliquid putare nugas.

Yet I have other reasons for wishing your name to stand at the head of a translation on which I have bestowed some pains.—The subject is an interesting one, and in your legislative character it may have some claim to your attention. You have honoured me for more than twenty years with the warmest friendship, without its being chilled for a single

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moment; you have conferred on me many favours, and I have no other public mode of shewing my sense of the former, or my gratitude for the latter. In all probability this may be the last literary work in which I may engage, and in addressing it to you, I offer it to the person whom, exclusive of my own family, above all others I respect and value.

R. CLAYTON.

ADLINGTON,
June 29, 1803.

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PREFACE.

THERE is in general a desire to investigate the history of men distinguished by their rank, ingenuity or learning, and the reader in a similar manner usually feels an interest in the character and circumstances of every author of eminence whose work falls into his hands. A long series of years spent in the public service, in the camp or cabinet, afford ample materials to gratify the wish; but few fragments are to be collected from days passed in philosophical retirement, and "ended," as Johnson observed of Lord Rochester, "before other men begin to display their abilities."

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Gaetano Filangieri was born on the 18th Aug. 1752, and was the third son of Cæsar Prince of Arianelli. His mother was Duchess of Fraguito. In Naples the profession of an advocate is more respectable than in many other governments on the continent, and, as it there leads to the first employments in the state, the younger sons of the nobility, with a slender patrimony, often make choice of it. Filangieri was bred to the law, and whilst he practised in the Neapolitan courts, the little treatise with the title "Riflessione Politiche sull' ultima legge Sovrana che riguarda l' amministrazione di Giustizia," established his legal and literary reputation.

In 1775, his uncle Serafino Filangieri, Archbishop of Palermo, being translated to the see of Naples, with the priory of the Constantinian order annexed to it, bestowed a rich commandery on his nephew, which enabled him to resign his profession, and to devote, more agreeably to his inclination, his time to literary pursuits.

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His Sicilian Majesty in 1777 appointed him gentleman of the chamber, and he had a commission also in a royal corps of volunteers, which was wholly composed of the nobility, and considered as the King's select body guard.

These appointments, however, did not break in upon his studies, and notwithstanding his attention to his public duties, the two first volumes of " la Scienza della Legislazione" appeared in 1782, of which three numerous editions at Naples, two at Florence, one in Catania, and another at Milan, were soon published. A burst of admiration and applause followed, and Filangieri on the first vacancy was appointed a counsellor of finance, an office which was only intended as a step to greater emoluments and honours.

Mr. Meyer, to whom the public is indebted for some very ingenious observations on Italy, during his residence at Naples became acquainted

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with Filangieri, and has drawn an animated picture of his friend. "In the society of his intimates he was the man of the world, always sprightly and active, with the warmest attachment to their interests: in the closet, where he was employed on his celebrated work, 'la Scienza della Legislazione,' he was the sage, occupied in laying the foundations of the future happiness of his country. I knew him when he was the companion of the heir to the crown, and when he was the friend of his Sovereign. Surrounded with seductions the most dangerous to the heart and character of a young man, whose birth, talents, and exterior advantages gave him a right to every pretension—in the midst of a voluptuous court—connected with it by many and multiplied relations—the favourite of a Monarch whose education he had shared—Filangieri was still himself, always equally great and noble, and worthy of esteem and admiration. In possession of high offices and employments, a more brilliant prospect opened before him, yet nothing could stand

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in competition with his love of domestic life, and his passion for literary and philosophical retirement. Notwithstanding the King's attachment to him continued, he quitted therefore the court, and took up his residence in his country house at Cava, where he devoted his hours to the great work that will immortalize his name. Four years were passed in this retirement, so congenial with his disposition, and he was afterwards drawn from it only by the King's express commands, who had conferred on him the office of royal counsellor of finance. Scarcely had he entered on this important charge, when a disorder arising from exposure to the night air in his returns to Cava, after the incessant application of the day, deprived his country of him, in the midst of his labours for the re-establishment of its finances, by the encouragement of the three great sources of national prosperity, agriculture, manufactures and commerce. Filangieri died in the 36th year of his age, and few persons have been so generally lamented. Such a loss was indeed a national

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and public one.—His activity was unwearied—his devotion to the happiness of his country universally acknowledged, and in his private life his character was honourable and amiable—his morality exemplary. The 'Scienza della Legislazione,' a work singular in itself, has been celebrated throughout Europe, and every unprejudiced judge of literary merit will always rank its author with the greatest political writers that have appeared. The Advocate Donato Tommasi, in his 'Elogio istorico' of Filangieri, has given a short sketch of his literary abilities and his writings.—Unshaken resolution, incorruptible integrity, formed the basis of his public conduct. Of every branch of the administration he was completely master, and he saw with an intuitive glance into every amelioration of which it might be rendered capable. With the intrepidity of an ardent and enlightened mind, he had conceived the vast plan of a general reform in the legislation of his country; and his execution of a part of this stupendous system fully answered the ex-

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pectations formed of it, from his professed knowledge and determined resolution. In defiance of personal obloquy and personal danger, he had entered on the correction of a multitude of secret abuses in the general administration of the kingdom, and of the government of Naples in particular. No obstacles could check or impede his progress.—Neither the hatred of a proud and imperious nobility, whose oppressions of the lower orders of the people he openly attacked; the remains of the feudal tenures, and the seigniorial jurisdictions, so intolerable; nor the persecutions of the clergy, with the Queen's confessor at their head, whose enmity he had provoked by shaking to their foundations superstition and spiritual tyranny, stopped for a moment his exertions for the public interests.

"To great personal attractions and an uncommon elegance of figure, every great and noble intellectual faculty was added. Gaiety, affability, candour, benevolence, and sensibility, were vi-

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sible on his countenance. At the first introduction to him his manly dignity of dèportment, with the easy gracefulness of his manners, the charms of his conversation, with the harmonious tone of his voice, stole at once upon the heart. From a more intimate acquaintance with him, a warm and enthusiastic attachment to him invariably followed."

Such was Filangieri! Short as the career of honour and virtue was, what the Roman orator applied with the most refined flattery, in his oration for Marcellus, may be truly said of it.—"Satis—si placet, gloriæ, at quod maximum est patriæ certe parum."

On the tomb, near his country house at Cava, where he was interred, there is the following inscription.

CAJETANUS FILANGIERUS

CESARIS. ARIANELLI. PRINCIPIS. FILIUS.

SANGUINE. NOBILISSIMUS

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NOBILIOR. GENIO. PROBITATE. FACTORUM. GLORIA.
CARUS. JOVI. MINERVÆ. PAR. DEAE. SUAVITATE.
BLANDILOQUIO.
VENERATUS. PROPINQUIS. AMICIS. COÆVIS.
LEGUM. FERENDARUM. DOCTRINA
FELICITATIS. PUBLICÆ. AUCTOR. SOLON.
JURA. PRIMÆVA. RESTITUENS. CIVI.
VINDICANS. HUMANO. GENERI.
DILECTUS. REGI. LACRYMATUS. EUROPÆ. POPULIS.
SUIS. FLEBILIS. ÆTERNUM.
ANNORUM XXXV. XXII JULII. MDCCLXXXVIII.
ÆRE. CHRISTI.
MORTE. PRÆMATURA. EREPTUS.
POSTERUM. MEMORIA. IMMORTALIS.

His Sicilian Majesty could not refrain from tears when Filangieri's death was announced to him, and exclaimed with a sigh, as he recovered himself, " Ho piu de tutto perduto nella morte di questo degno e illuminato vassallo." The widow Filangieri soon followed her husband to the grave. They left three sons, and his Sicilian majesty, with immortal honour, took their education on himself, settled an annual pension on

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them for their lives, and added to the royal grant the most flattering testimony to the merit and virtues of their father.

The work, to which this serves as an introduction, as Mr. Meyer has remarked, is singular in its kind, and it must be acknowledged, that its fortune has been also singular. In the bosom of superstition, and in some degree of civil and religious slavery, it has run through no less than seven different editions. It has been twice published in the German language,* has appeared in two French versions, has been translated into Spanish,§ and is at last naturalized in the happiest and freest government in the world.‡

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* Altdorf, 1789. Vienna, 1789.

§ By Dom. Giacomo Rubio, Avocato e Con. Reale, Madrid, 1787, an edition afterwards suppressed by the Inquisition.

‡ Mr. Kendal published a translation of the first volume of "la Scienza della Legislazione," in 1792, but gave up the idea

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On the subject of some of the sentiments contained in it, Filangieri pathetically appealed to his readers, and "implored them, with the immortal Montesquieu, not to condemn hastily in a few moments the labour of many years, or to consider him as a wild and fanatical projector, if he sometimes quitted the beaten path of his political predecessors in search of useful novelties."* It may not be improper to repeat the caution,

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of proceeding. I have confined the present translation to political and economical laws, and have not extended it to criminal legislation, for the following reasons:—Our own distribution of public justice is scarcely susceptible of amendment, and a great part of Filangieri, on this subject, relates to the local imperfections of the continental system of criminal jurisprudence, neither useful nor entertaining to an English reader.

* —— io vi prego coll' immortale Montesquieu di non condannare colla lettura di pochi momenti un' opera di piu anni, e di rispiarmi il nome di fanatico novatore o progettista ad uno scrittore, che oltrepasse qualche volte i confini della cieca consuetudine per cercar l' utile nella novita.

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and to borrow the forcible expression of Themistocles, "Strike, but hear."*

* Παταξον μεν, ακουσον δε. Plutarchi Vita Themistoclis. tom. 1. 219. Ed. Steph. 12° Paris, 1572.

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THE

SCIENCE

OF

LEGISLATION.

BOOK I.

CHAPTER I.

THE SOLE AND UNIVERSAL OBJECT OF LEGISLATION DEDUCED FROM THE ORIGIN OF CIVIL SOCIETIES.

WHATEVER may have been the state of mankind on the foundation of civil society, the precise period of its union, the form under which it first coalesced, and the place in which it was moulded into its original shape, there cannot be a doubt of the cause which produced it. A single principle gave it birth. A wish for general safety

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and general tranquillity. The idea, indeed, of a ferocious life previous to civil society, where, as some misanthropists have supposed, man wandered like the savage in his native forests, wild and comfortless, is perhaps a mere imaginary one. It would betray an ignorance of human nature, and the character which distinguishes us from the rest of the animal creation, to believe that we were born for such a dreary and precarious existence, or that the state of natural society were a state of natural violence. Far from being seduced by such erroneous suppositions, we may more safely admit that Providence would have formed the most perfect and august of its productions in vain, if man had not been formed for social intercourse and mutual connexions.— It has given him reason, which developes and expands by communication, and in the concourse of society. In addition to imperious feeling, from which the cry of other animals is wholly derived, he has the exclusive blessing of speech. He has the inestimable advantage of attaching his ideas to certain distinct sounds agreed upon in common, and appropriated to transmit those ideas to

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the rest of his species. Without that instinct, which regulates the brute and directs its motions, man alone deliberates upon his actions, and to guide him in his deliberations he has the benefit of instructions from society, which he could not by any other means have drawn from any other source. He passes a longer infancy than other animals, and during its weak and helpless state he owes both his nurture and protection to society. He has different degrees of force, industry and talents, which intimate that he was designed to fill different situations. He has various inclinations, occupations and pursuits; different wants, desires and pleasures; and is susceptible of a multitude of passions useless to a solitary being. For what purpose is he warmed with the ambition of pleasing, of acquiring the esteem of others, or establishing an empire over their affections and opinions? Why are the germs of friendship, compassion and benevolence, planted in his breast, or the seeds of those amiable sentiments sown within his bosom, which ripen in every well-disposed mind? Why has he the singular desire of sharing with another a part of his

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existence; or why, in a word, are not his natural appetites confined within the narrow limits allotted to those of every other inhabitant of the globe, the satisfaction of his physical wants? They frequently return to him, though but for a moment, and in the void they leave him after their enjoyment, they prove their insufficiency to procure his happiness, and proclaim to him that he has intellectual, as well as corporeal wants, which are only to be gratified in society and its relations.* It is reasonable therefore to conclude

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* Puffendorf has drawn a most humiliating picture of man in a solitary state. "Ast in eo præ brutis homo deteriore jam conditione videtur, quod vix ullum aliud animal tanta nativitate IMBECILITAS prosequatur; sic ut miraculi sit instar futurum, si quis ad maturam ætatem pervenerit, nisi aliorum Hominum auxilium accedat. Cum nunc inter inventa humanæ necessitatis adminicula plurium annorum sollicita informatio requiratur, ut proprio quis marte victum et amictum sibi parare queat. Fingamus hominem, citra omnem ab aliis hominibus accedentem curam et culturam, ad robustam Ætatem provectum, cui nihil sit scientiæ, nisi quod ex proprio ingenio velut ultro pullulavit, eundemque ab omni aliorum ope

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that society was coeval with man; and that the savage in his woods exhibits rather the picture of fallen degenerate man in an unnatural state, or in other words, the ruined degraded species, than his living image in the infancy of the world.

This primitive society coeval with man, is not, however, to be confounded with civil society, for they differ widely from each other. It would be absurd to imagine that men, though destined to live together, had in their early intercourse with each other renounced their independence, before they had learnt from experience the necessity and

---

atque consortio in solitudine destitutum. Sane vix miserabilius animal deprehendetur. Elingue nimirum ac nudum, cui nihil aliud relictum, quam herbas radicesque vellere ant sponte natos fructus legere, sitim fonte, flumine aut lacuna obvia levare, repellendis aeris injuriis antra subire, aut musco graminevе corpus uteunque tegere, tempus tædiossimum per otium exigere, ad quemvis strepitum aut alterius animantis occursum exhorrescere, denique fame, frigore aut per feram bestiam demum perire. Puffendorf. de Officio Hominis et Civ.. lib. 1. c. 3. tom. 1. 110. 8º L. B. 1769.

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advantage of the sacrifice. Primitive society was not, therefore, civil society. It was strictly a natural union, where the distinctions of the noble, the plebeian, the master, and the slave, and the names of the magistrate, the laws, civil offices, impositions and punishments, were equally unknown. It was an union, where no other inequality than the inequality from force or strength existed; no laws but those of nature; no restrictions, those excepted which sprung from friendship, necessity, parental affection, and filial attachment. Its several members had not yet resigned their original independence; deposited their power in the hands of other persons; confided to their custody their rights; or entrusted the protection of their lives, their families, and honour, to any code of jurisprudence. Each individual was in fact a sovereign, because independent; a magistrate, because the guardian and protector of the law written in his breast; and a judge, from being the supreme arbiter of the disputes arising between his family and his neighbours, and the executioner of justice for the injuries he had received.

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Unhappily for mankind this state could not long subsist. The beaver appears to be in the sole possession of the difficult but happy art of combining the advantages of public union with private independence. Notwithstanding the inequality from force and strength was the only inequality that could not be extirpated in primitive society, yet in progress of time, as the human passions discovered themselves, they necessarily produced numerous disorders. Moral equality, unable to shew its face in opposition to physical inequality, sunk, overpowered by its influence. The weakest individual was at the mercy of the strongest, exposed to his caprices; and even his subsistence, the pleasing but painful fruit of his meritorious toil and labour, became the object of the rapine and plunder of his more powerful neighbour. Life and honour soon ceased to be any other than precarious blessings, of which the possessor was liable at every instant to be deprived, as often as a restless and malignant spirit was united to a body more gigantic and athletic than his own. Suspicion, distrust, and fear must naturally disturb this primitive society, and a re-

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medy was to be searched for, that would correct the evil. One only was to be found. It was discovered that physical inequality could not be destroyed without renouncing moral equality—that for the preservation of tranquillity independence was not absolutely requisite—that a public force must be established superior to private force, and that this public force could only flow from the aggregate of the whole collected mass of private force—that a moral person was wanting to represent the public will, and to be the guardian of its power—that the public force ought to be united to public reason—that the interpretation of laws, the establishment of the rights, and the regulation of the duties of each member of the community ought to be under its controul—that it ought to prescribe certain determined rules of government, calculated to maintain the equilibrium between the wants of each citizen and his means of gratifying them—and lastly, that by the liberty of acquiring every requisite for personal preservation and personal tranquillity, each individual might be amply recompensed for the surrender of his original independence.

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Such appears to have been the first intention of civil society and laws, and consequently the only object of universal legislation. It will be here necessary to examine what is meant under this general principle, the consequences that may be deduced from it, and to see how far every part of legislation should correspond with its common end.

CHAP. II.

OF THE SUBJECTS COMPREHENDED UNDER THE GENERAL PRINCIPLES OF TRANQUILLITY AND PRESERVATION, AND THEIR CONSEQUENCES.

PRESERVATION includes existence, tranquillity includes security. Means of subsistence are necessary for existence, and to be secure there must be confidence. The means of subsistence may be ranged in two classes. Those which provide for the indispensible demands of life, and those which place the individual in a situation enabling him to partake of a certain portion of happiness, inseparable from a certain degree of ease and

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public convenience. The terms of ease and public convenience do not extend to the exorbitant riches of any set of men, much less of those, who, immersed in luxury and idleness, encourage with impunity by their example these two destructive vices to society. Exorbitant riches in particular individuals, and luxurious idleness in others, are symptoms of national infelicity, and suppose the misery of the bulk of the people. They are civil partialities prejudicial to the public interest; for a state can only be rich and happy in the single instance, where every individual by the moderate labour of a few hours can easily supply his own wants and those of his family. Constant labour, and a life supported with difficulty, can have no pretensions to the title of a happy life. It was the miserable doom of Sisyphus! No single instant could be called his own. The whole of existence was incessant toil, and endless exertion. It follows, therefore, that riches in a rich state should be properly distributed. If man, however, wishes not only for preservation but tranquillity, this will not be sufficient. He must have confidence, and that confidence must be a confidence in the government, the magistrates, and his fel-

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low citizens. From the government he must not fear the usurpation of his rights; he must be satisfied the guardians of the laws will not by a breach of their solemn duties make use of them as instruments of his oppression; on his fellow citizens he must rely for domestic peace, for his protection under the laws, till by crimes he may have forfeited his claim to it, and the property, which he has acquired either by a just and legal title, without the infraction of the several rights of others, or by the labour of his hands, being defended by the whole force of the public.

Such are the consequences that result from the universal principles of preservation and tranquillity, and every part of legislation should aim at securing these precious benefits for society. Yet before the subject of particular laws is introduced, and we plunge into a chaos, where the objects are so intricate as to require the whole power of method to elucidate them, it may be proper to state some general rules, without which the science of legislation would continue to be vague and undetermined.

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CHAP. III.

LEGISLATION, LIKE ALL OTHER SCIENCES, OUGHT TO HAVE ITS RULES, AND ITS ERRORS ARE THE GREATEST SCOURGES OF A NATION.

A CURVE is more easily described than a right line—geometry gives us many rules to draw a perpendicular one—painting, sculpture and architecture have their just proportions, without which neither correctness nor elegance can be expected. From an inattention to first principles the perpendicular line would often stray into an oblique one, and the painter, the sculptor and architect would create monsters. Arbitrary perfection appears then not to be designed for the human mind, which is not reducible to uniformity. Every character has its own peculiar proportions, and the nearer they reach perfection, it becomes more valuable. Is the science of legislation to form the single exception to general rules, and is it the only science in which these principles are not applicable? "That the sole will of the le-

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gislator is the only rule of legislation," has been the language of tyranny and despotism; and amidst the revolutions which are perpetually varying the situation of affairs, and the aspect of society, the error, that it is not possible for this science to have any certain and immutable principles, has been indiscreetly adopted. Government, it must be allowed, is a complicated machine, its wheels are not always the same, and the force, which communicates to them their motion, differs at different times. Yet this does not prove that the laws on which they act, and by which they are regulated, are not themselves determinate and fixed. Providence could never have intended that a science so peculiarly connected with social order, and where an error might be as destructive to whole nations as the wrath of offended heaven, should be devoid of certain and immutable rules. The astonishing variety of the human mind and obscure combination of our ideas, derived sometimes from false and mistaken data, though sanctified by prejudice, forcibly demonstrate the necessity of some certain guide to conduct us in the immense ex-

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tent into which this science branches out. How many evils might not the world have escaped, if man had been less confident of the powers of his own understanding, and listened to such a guide! Nothing is more easy than to commit an error in legislation, though nothing is more difficult to rectify, and nothing so destructive to a country. The loss of a province, or an ill-conducted and injudicious war, is the scourge of a moment. A fortunate opportunity, the victory of a day, may compensate for and counterbalance defeats for years; but a political mistake, an error in legislation, involves the ruin of a nation, and prepares its misery for ages of futurity!

Sparta, so often opposed by the victorious arms of its more powerful neighbour, rose more formidable from its misfortunes; and the memorable defeat at Cannæ gave fresh courage and resolution to the Roman people. Mournful experience has notwithstanding taught us, how a single mistaken edict in finance has reduced into a desert the most fertile tract of country, and deprived it of millions of its most useful inhabitants. It hath

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shut at once its ports, and transported into other territories its trade, its commerce, and its riches.

A review of the modern history of Europe will afford ample and abundant proof of the observation, and exhibit to us the most awful spectacles. Within the space of two centuries we have seen four or five powers ascend to the highest sovereignty, and after the acquisition of extensive dominion, sink from the superb eminence to which they had risen, into insignificance, if not humiliation. If we endeavour to ascertain the cause of their political convulsions, we cannot trace them to any other source than a defect in their legislative system. Spain, under Charles V. may almost be said to have been at the head of Europe, and to have directed all its important movements. This nation, which first carried its trophies into a new hemisphere, was blest with the most advantageous position, and united the most fertile country in Europe with the richest in America. She might have been the happiest and richest nation upon earth; she might have given laws to every other country, and found

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within herself the materials for the foundations of a long and uninterrupted series of prosperity. All these advantages were within her grasp, and she suffered them to escape. An instantaneous and insupportable increase of taxes followed the expulsion of the laborious Moors, and other errors in her legislative code, with a false system of œconomy, had such fatal effects on her agriculture, industry, commerce and population, that notwithstanding the efforts of a late vigorous administration, they still continue in a deplorable condition. Her legislators, unenlightened and far from being citizens of the world, did not perceive that the prosperity of Spain was connected with the prosperity of other European nations; or that without increasing the riches of her neighbours, and diffusing a part of her treasure through the rest of Europe, she could not preserve her own. By the continued accumulation of her bullion, without extending a share of it to other states, her industry and agriculture were oppressed; her manufactures from their price could not enter into a competition with those of foreign nations; and her inhabitants were obliged either

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to migrate with the property they could secure in secret, or to sacrifice a part of it for the privilege of carrying away the rest. In a word, they did not consider gold and silver as objects which Spain could not exclusively possess, or of which she had only occasion for such a share as would preserve the balance in her favour. Without attention to this truth, it has been the effort of her laws to impede by every method their exportation, and they have by these means checked the population, destroyed agriculture, and ruined the industry of their country, which has been literally metamorphosed into a dropsical body, unable to retain the very liquids which it could not submit to drink with moderation.

Leaving Spain and crossing the Pyrenees into France, we shall find the cause of her decline in the errors also of her legislation. Having, like Spain, taken the lead in the politics of Europe, like Spain, she has been the victim of her absurd edicts and imprudent legislature. An ordinance dictated by superstition and fanaticism, in the last declining years of an old and enfeebled sove-

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reign, which are generally years of imbecility, and an error of his minister, changed the whole system of her political economy, and exposed her to a train of evils that have almost obliterated in their consequences her forty years of victory, the recollection of her able generals, her great men, her academy, her progress in the arts and sciences, and her influence over Europe. The exile of a portion of her industrious inhabitants, who did not choose to renounce at the pleasure of an arbitrary monarch, the unalienable right of the human mind, the right of religious liberty, exclusive of its fatal stab to her population, deprived the state at the same time of its manufactures, which the unfortunate refugees introduced into the governments that had the wisdom to receive them. Colbert at this period, turning the whole bent of his thoughts to the internal commerce of the kingdom, seduced by his encouragement the labourer to the loom, and at the expence of the solid advantages of agriculture, gave France a transient and treacherous prosperity, which soon vanished. As the neighbouring nations became industrious, they borrowed the French manufac-

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tures, enriched themselves, and ruined France. England was the first to profit of Colbert's error, and acquired an immediate and manifest superiority. Yet England, after having extended her empire over the ocean, carried her commerce into every port in every country, lowered the flag of every other nation in the world, and displayed her own in triumph, wherever the winds and waves could waft her fleets, England in her turn has felt some national loss,* from the weakness of her legislative councils. An able statesman would have told her, that a mother with only a few children should not suffer them to be divided from her by any distant separation—that Great Britain with ten millions of inhabitants was not able to people

* When the "Scienza della Legislazione" was first published, England was engaged in the war with her American colonies, from which the most fatal consequences were apprehended by many political writers of the times. The author of the Science of Legislation made use of the strong expression "Oggi al orla della Rovina." The prophecy was erroneous, and the expression has been varied.

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many colonies—that her own population was not equal to so many sacrifices—that instead of inviting her sons to her foreign settlements, her laws, by wholesome regulations, should have prevented frequent emigrations—that she ought to have been contented with such establishments as were immediately necessary for her commerce—and lastly, that amidst her ardour for universal empire in the new world, she ought to have recollected, that men who quit their country to serve it in its foreign territories, were still entitled to their native rights and privileges—that oppression is more injurious from a free people—that mild and gentle regulations best secure distant and detached possessions—that to restrain the commerce of colonies to their mother country would be the source of numerous disputes, and could not fail to exasperate them—that to deprive them of their trial by jury would diminish their confidence in government—that to raise arbitrary contributions on them would be an attack on their freedom—and that to deprive them of the right of taxing themselves, perhaps the best and only guardian of the liberties of their country, for which their ancestors

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had so often bled and triumphed,* was to deprive them of their birthright, which they could not forfeit by a residence in any other part of the earth. An experienced and judicious minister would have foreseen likewise that colonies becoming rich and powerful do not stand in need of the protection of the parent country, and that greater care and moderation is requisite in the treatment of a people who see their interest in independence.

Other evils would have occurred to an able and discerning government, and if a Locke or a Penn had presided in its councils, he would have convinced it of the fatal consequences of the abuse of its national credit, by the continual increase of its national debt and the multiplication of its paper, the substitute for specie, whose existence is problematical. From these two circumstances, the value of money must be inevitably lessened, the

* The Italian expression is "e DETRONIZZATI I LORO RE." I do not think it warranted.

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country burthened with additional taxes, and its manufactures and the articles of its commerce rise in price, which would be highly detrimental to their sale in the foreign markets, and finally affect the national industry.

No regard whatever has been paid to these simple considerations, which a wise ministry would not have overlooked, and the neglect of them may occasion the ruin of a nation, which has been in other instances so watchful of its interest. The observation is a melancholy one; but states and empires have, like man, their moments of ignorance and imbecility.

In treating of the rules necessary to avoid the errors, whose fatal effects have been already shewn, laws may be distinguished by absolute goodness, and relative goodness, and in the discussion of these two distinctions the whole science of legislation will be comprised.

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CHAP. IV.

OF THE ABSOLUTE GOODNESS OF LAWS.

THE absolute goodness of laws consists in their agreement with the universal principles of morality, common to all nations and all governments, and adapted to all climates. Natural right contains the immutable principles of eternal justice in every case, and it may easily be conceived what a fruitful source this is for legislation. Man cannot be ignorant of the rights of man, for they are neither the result of the ambiguous maxims of the moralist, nor the useless and unproductive meditations of the philosopher. They are the dictates of universal reason, and of that moral code, which the Author of Nature has imprinted on the heart of every individual of the human race as the living minister of justice, holding to every one the same language, prescribing in all ages, and at all times, the same duties, that in the words of Cicero, "Sæculis omnibus ante nata est, quam scripta lex ulla,

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ante quam omnino civitas constituta,"* which, inseparable from the nature of thinking beings, subsists, and will subsist for ever, in defiance of passions that obstruct it, and tyrants and impostors, who would obliterate or annihilate it in blood and superstition.

The savage of Nova Zembla or Otaheite is aware, as well as Locke, that he has no right to the beast killed at a distance in the chace by one of his tribe—that the produce of the soil belongs to the person who cultivates it, and cannot be transferred to him without the consent of the proprietor, and that the life of another cannot be taken by him except in defence of his own. It is thus that morality decides, this is natural justice, and this is the first rule of law. Have legislators always attended to this axiom, and have not the most celebrated for their moderation sometimes forgotten it? Melancholy indeed is the

* Cicero de Legibus. lib. 1.

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condition of humanity, when even the sage and virtuous Plato reasons and expresses himself as an ignorant and iniquitous tyrant might be expected to do on the same subject. "If a slave, in his own defence," he observes, "puts a freeman to death, he is to be punished as a parricide."* The right of self-defence then becomes a crime in the person of a slave, or the unfortunate being who had the misfortune to fall into the hands of another more powerful than himself, in support of his property, his liberty, and country! The

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* "Se un servo (dice egli) nel mentre, che si difende, uccide un uomo libero, che gli si era scagliato adosso per ucciderlo, sia punito come parricida." Filangieri for his authority refers his readers to PLATO DE REPUBLICA, but without specifying the passage, or intimating in what part of the treatise it is to be found. I apprehend there is a mistake in the reference, and that the passage alluded to is one in Plato's ninth book de Legibus. "Εαν δε αυ δουλος ελευθερον αμυνομενος αποκτεινη, καθαπερ ὁ κτεινας πατερα τοις αυτοις ενοχος εστω νομοις." Plato de Legibus. lib. 9. tom. 9. 36. 8° Bipont, 1786. I doubt whether the Greek will bear in its fullest sense the "che gli si era scagliato adosso per ucciderlo," and I have adopted in the translation the sense of the Greek original.

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ancient legislators indeed, and particularly the Romans, were the authors of atrocious ordinances in this article of their code, and carried the infamy of their system so far as to deny their slaves the common name of men. Of such little estimation were their lives, that their murderers by the Aquilian law, were condemned only to the punishment prescribed for the destruction of a domestic animal or horse.* Political tyrants!

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* "La legge Aquilia condannava ale' istessa pena l' uccisore d' un servo, che l' uccisore del cane, e del cavallo altrui." The following is the sentence of the Aquilian law. "QUI SERVUM SERVAMVE, ALIENUM ALIENAMVE, QUADRUPEDEM VEL PECUDEM, INJURIA OCCIDERIT, QUANTI ID IN EO ANNO PLURIMI FUIT. TANTUM ÆS DARE DOMINO DAMNATUS ESTO." And one of the ancient commentators on this passage observes, "apparet, servis (nostris) exæquat quadrupedes, quæ pecudum numero sunt, et gregatim habentur; veluti oves, capræ, boves, equi, muli, asini. Sed, an sues, pecudum appellatione continentur, quæritur? Et recte Labeoni placet, contineri: sed canis inter pecudes non est."—Corpus Jur. Civil. tom. 1. 225. quarto. Leips. 1735.—Filangieri seems, therefore, to have added the "uccisore del cane" without authority, if the opinion of this ancient commentator be correct.

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were these your laws? Unfortunate fellow creatures, where were your rights? If nature had been once consulted, would ye have been thus degraded? Would Lycurgus, the wonder of antiquity, have condemned to a cruel and premature death weak and deformed infants,* if he had ever read in the sacred book of nature the unalterable precepts of universal preservation? Would he have allowed of the flagrant traffic of adultery, with the permission of the husband?† An individual may indeed share his property to any other, but in the sum of rights, there are many that are not susceptible of either transfer or cession, and amongst them the right of existence, and the

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* Ει δ' αγιτης και αμορφον, απιτεμπον εις τας λιγομενας αποθετας, παρα ταυγιτον των βαραθρωδη τοπον, ως ωτ' αυτω ζην αμειναν, ωτε τη πολει, το μη καλως ευθυς εξ αρχης προς ευιξιαν η ρωμην πεφυκος. Plutarch. Vit. Lycurg. Sec. 16. ed, Reiske. Lips. 1784.

† Εξην μεν γαρ ανδρι πρεσβυτερω νεας γυναικας, ει δη τινα τον καλω και αγαθων ασπασαιτο νεων και δοκιμασειεν, εισαγαγειν παρ' αυτην, και πλησαντα γενναιω σπερματος, ιδιον αυτοις ποιησασθαι το γενηθεν. Plutarch. Vit. Lycurg. Sect. 15.

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rights of nature, which form the essence of matrimony.

Montesquieu relates a law of Gundebald, king of Burgundy, by which the wife and son of a person who had committed felony became slaves, if they did not discover it.* He adds another of Recessuindus, which allowed the son of an adultress to accuse her, and put the servants of the house to torture.† These two laws for the

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* Gondebaud, roi de Bourgogne, vouloit que, si la femme, ou le fils de celui qui avoit volé ne revelоit pas le crime, ils fussent reduits en esclavage. Montesquieu De l'Esprit des Loix. Liv. 26. c. 4.

† La loi de Recessuinde permettoit aux enfans de la femme adultere ou à ceux de son Mari de l'accuser et de mettre a la question les esclaves de la maison. De l'Esprit des Loix. Liv. 26. c. 4. This law is to be found in the code of the Visigoths. Verum quia difficile fieri potest ut per liberas personas mulieris adulterium indagetur, dum frequenter hoc vitium occulté perpetrari sit solitum; proinde quando ad convincendum adulterium accusatæ mulieris ingenuitas omnino defuerit, prædictis personis quibus ejus adulterium accusare

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support of morality are in direct opposition to nature, from which morality itself derives its origin. Parental respect and filial affection are her first dictates, and nature herself inspires us with nearly the same horror of revealing the crimes of our parents, as we feel for the crimes themselves. Her powerful accents plead unalterably in their favour. But it may be said, the laws insist on accusation, notwithstanding nature prohibits it, and directs concealment. Between the force of laws and energy of nature, all comparison would be superfluous. Nature must invariably prevail, and laws, instead of opposing her, should afford her every assistance and encouragement, in throwing up mounds against multitudes of crimes. Shame, to produce an example, is a natural sentiment, the daughter of modesty, which revolts at vice. A law that tended to destroy it would

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presenti lege permissum est, hoc etiam aperté licitum erit, ut per quæstionem familiæ utriusque domini accusatæ mulieris adulterium coram judice justissime requiratur. Lindenbrogi Cod. Leg. Antiquarum, 66 fol. Franc. 1613.

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be pernicious, and yet the law of Henry II.* exposes to a capital punishment the young and artless female, who becomes the mother of a

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* Ordonnons que toute femme qui se trouvera avoir celè converte, et occulté tant sa grossesse que son enfantement, sans avoir declaré l'un, ou l'autre, et avoir pris suffisans tesmoignages de la vie, ou mort de son enfant lors de l'issue de son ventre, et âpres se trouve l'infant privé du baptême et de sepulture publique et acoutumée, soit telle femme tenue reputeé avoir homicidé son enfant, et pour reparation punie de mort, et du dernier supplice et de telles rigueurs que le cas le meritera. Institutes Crimin. par Vaugelas, 532, Paris. 4to. 1757. This law of Henry, notwithstanding the progress of philosophy in France, is still in force, and afforded a memorable opportunity to the Countess du Barry, the well known mistress of Louis XV. to display a striking instance of benevolence. A young woman had been seduced by her lover, and had been delivered of a still-born child, without a previous declaration of her pregnancy to a magistrate, for which she had been condemned to death. The sentence being confirmed by the parliament, was on the point of being executed, when Mon. Mandeville, an officer of the black "musquetaires," presented a memorial on the subject to Madame du Barry, who forwarded immediately the following interesting letter to the "Garde des Sceaux."

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dead illegitimate child, without a previous declaration of her pregnancy to a magistrate.—God forbid that the dreadful crime of murder

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" My Lord,

" I am not acquainted with your laws, but I know that they are unjust and barbarous, contrary to policy, reason and humanity, if they punish a young woman with death, who has been delivered of a still-born child, without a previous declaration of her pregnancy to a magistrate. The memorial which I enclose to you states this to be the fact. It appears that the person has been condemned from her ignorance of the law, or for having transgressed it from a principle of modesty, perfectly reasonable. I submit the examination of the case to your justice; but the unfortunate petitioner has a claim to some indulgence, and I demand for her a mitigation of the sentence. " I have the honour to be, &c."

This interposition did not fail to make the necessary impression on the " Garde des Sceaux," who directed a revisal of the sentence, and afterwards pardoned the culprit. It is not to be supposed that the memorial contained any arguments which had not been previously urged by an advocate in her defence on the trial, but the eloquence of the FAVOURITE was more powerful and persuasive. Is it possible to reflect without pity and indignation on the judicial system of any country

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should ever find an advocate, or that the violation of the most sacred laws of nature in rendering any helpless infants the victims of ferocity, should be defended! Yet the laws do not seem to have affixed any certain degree of infamy to illegitimate pregnancy, and it is from the public censure and modesty this salutary shame arises. There appears therefore a contradiction in the laws, and a confession before a magistrate under these circumstances is not to be expected. The manifest intention of the law of Henry II.* was

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in which a secresy inspired by natural modesty is punished with death, and a letter from the monarch's MISTRESS is sufficient to cancel a sentence confirmed unanimously by the supreme court of judicature in the kingdom. The sentence and the pardon were equally disgraceful.

* By the laws of some other parts of Europe a concealment of pregnancy and the birth of an illegitimate child is likewise punished capitally.

Mulier impudica, quæ ex illegitimo concubitu uterum gestat, nec hoc ante partum aperit, latebras quærens quo furtim partum

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to preserve the offspring—is the object not attainable without recourse to means so violent and unnatural? Would not a communication by the

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deponeret et deinde abscondit, percutiatur securi, et in pegmate comburatur non attento prætextu, mortuum, vel ante justum terminum editum fuisse. Leges Suec. de Crimin. cap. 16.

Fæmina quæ per impudicitiam prægnans fuerit, et partum celaverit, nec usitata remedia quæ sibi et partui salutaria sunt adhibuerit, partum qui non ostenditur, aut exanimis prodiisse dicitur, consultò interfecisse præsumitur. Leges Dan. lib. 6. c. 6. Art. 9.

In England, though "it is enacted by the statute 21st Jas. c. 27. that if any woman be delivered of a child, which if born alive should by law be a bastard, and endeavours privately to conceal its death by burying the child or the like; the mother so offending shall suffer death, as in the case of murder, unless she can prove by one witness at least that the child was actually born dead. Mr. Justice Blackstone observes, that it has of late years been usual with us in trials for this offence to require some sort of presumptive evidence that the child was born alive, before the other constrained presumption (that the child whose death is concealed, was therefore killed by its parent) is admitted to convict the prisoner. Blackstone's Comment. on the Laws of England, book 4. chap. 14.

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female of her indiscretion to one of her acquaintance, who might have provided for the infant, have been sufficient? Why is the effect of her natural modesty, and the fear of public shame, to be so severely punished? Why in many cases is the death of the child, owing to the want of assistance from the fear of public shame, to be confounded with the crime of wilful and deliberate murder? Why is the state to be deprived almost in the same instant of two citizens by this sanguinary law, of the child which dies, and the mother, who might live to add to its population by her future legitimate progeny? Is it not as tyrannical to exact an acknowledgment of her frailty as to insist on a person being his own executioner? A law, then, of this import has not a single grain of absolute goodness.

The universal principles of morality admit, however, in certain cases of some modification from the laws. The duties of private life are naturally reciprocal. Yet a law of the Achæans dispensed with the support of the husband when the wife was guilty of adultery. The law of

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nature was not here superseded, it was only modified, and the modification had both justice and utility in its favour. With the Grecians matrimony was a contract binding equally both parties; though after the crime of infidelity, their laws saw only in the husband and the wife two unconnected citizens. Their object was wholly political, and the legislature was aware that morality was the firmest foundation of a nation. Solon obliged children to maintain their parents when reduced to want, except they had been born of a public prostitute,* their parents had either not taught them any employment,† by which they might procure their livelihood, or exposed them to infamous and unnatural vices.

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* Plutarch observes on this law, "Εκεῖνο δ' ἠδη σφοδρότερον το μηδε τοις εξ ἑταιρας γενομενοις επαναγκες ειναι τῆς πατερας τρεφειν, ὡς Ἡρακλειδης ιστορηκεν ὁ Ποντικος· ὁ γαρ εν γαμῳ παροῦν το καλον, ε τεκνων ἑνεκα δηλος ἐστιν, αλλ' ἡδονης, αγομενος γυναικα· τον τε μισθον απεχει, και παρρησιαν αὐθις προς τῆς γενομενης ὡκ απολελοιπεν, ὡς αυτο το γενεσθαι πεποιηκεν ονειδος. Plutarch. Vit. Solon. Sec. 22.

† Και νομον εγραψεν υἱῶ τρεφειν τον πατερα μη διδαξαμενον τεχνην επαναγκες μη ειναι. Plutarch Vita Solon. Sec. 22.

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Montesquieu, in his reflections on the law of the Athenians, remarks, that in the first case it might be doubtful of the father, and consequently left the obligation precarious; in the second he had rendered the son's life miserable, as he had not furnished him with any means of supporting it; and that in the third he had blasted the life which he had been the author of, and had done his child the greatest possible injury by the loss of his character, and the ruin of his reputation.* All these exceptions are notwithstanding useful modifications of the natural obligation, which enforces the general support of parents.

The next object of the absolute goodness of laws is revelation. Considering it as the expan-

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* La loi consideroit que dans le premier cas, le pere se trouvant incertain il avoit rendu précaire son obligation naturelle: que, dans le second, il avoit flétri la vie qu' il avoit donnée; et que le plus grand mal qu' il pût faire á ses enfans, il l'avoit fait, en les privant de leur charactère: que dans le troisiéme, il leur avoit rendu insupportable une vie qú ils trouvoient tant de difficulté à soutenir. De l'Esprit des Loix. Liv. 26. c. 5.

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sion and modification of the universal principles of morality, the laws should neither endeavour to oppose its progress, nor weaken its effect. An attempt at either would be an attempt to shake the foundations of an edifice raised by the Great Being, who has the first rights to our obedience. Revelation should be the legislator's guide. The decalogue alone contains within a few precepts every thing to be collected from an hundred volumes of morality. The duties of man to his fellow creatures, to himself, and to his maker, are clearly defined. A spirit of purity and piety breathes through the whole of the external and internal worship which it recommends. Superstition and idolatry are equally proscribed. The private peace of individuals and families, conjugal virtue, and public tranquillity, are the necessary consequences. Of what inestimable advantage to legislators is not such a perfect model! If indeed any brilliant instances of benevolence appear amidst the errors and obscurity of the European codes of law, they owe their lustre to a religion, which in the recommendation from the altar of the offices of mutual affection and the

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tenets of equality, hath strengthened the liberties of man by the prohibition of domestic slavery. This aged trunk, whose branches have overshadowed almost the face of the whole earth, since the establishment of christianity has ceased to incumber Europe. The triumph of reason and humanity is certainly our due, and neither the legislative code of Egypt, Greece, nor Rome, can stand a comparison with that of the present times. In the histories of these different nations, the legislator is no where to be found, who has respected the imperscriptible liberty of man, or adopted the remotest idea of its inalienability. With the most laborious investigation we shall not be able to discover a single person who has ever doubted there was not in the code of nature a title to legalize slavery, and a price equal to the value of the liberty of man.

That iron logic, which supposed the right of the conqueror over the life of his fallen enemy, introduced an usurpation still more indefensible, and pretended to justify his slavery, under the idea

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of not having taken away his life.* This absurd reasoning is no longer admitted in the modern law of nations, no more than the civil law admits of a sale of personal liberty, or the parent's contract for that of his children. The moment war is at an end the prisoner is free, he is restored by his more successful enemy to his family, his liberty, and country.† The armed citizen has therefore little reason for the fear of slavery, the peaceful individual has still less.

An unfortunate son is not, as in ancient Rome, exposed to the danger of being sold by his father when in want of necessaries,‡ and the laws have

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* "Non contra naturam est spoliare eum, quem licitum est necare," seems to have been even Cicero's opinion. De Officiis. lib. 3. 6.

† There is an exception to this rule with the piratical states of Africa, and the reason of this exception seems to be founded on the perpetual hostilities in which they are engaged with many other powers.

‡ The laws of the twelve tables gave the father an unlimited

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established asylums where indigence may deposit in secrecy and safety the fruits of its forbidden pleasures. A person's sale of himself is not authorized with us as in some cases by the Romans,* and the individual has neither the power, nor is under the necessity of depriving himself of his sole prerogative. The laws which prohibit this outrageous conduct, offer him support and freedom.

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right over the son. (Gothofred. Fragment. ad LL. 12 tabul. Liss 1. tab. 4) These sales were indeed prohibited by the Roman emperors, as appears by the rescripts of Dioclesian and Maximilian. Leg. 6. Cod. de Patria Potestate; but Constantine afterwards by the law "De Patribus qui filios suos distraxerint," allowed of them in cases of extreme distress, "Victûs Causa." Plutarch in his life of Solon, states also a similar law to have prevailed at Athens.

* The individual's sale of his own personal liberty was valid at Rome, and the freedman might dispose of himself by concealing his condition, and passing for the slave of a fictitious master. "Venum se dari passus est." De Liberis. 3. S. Siquis minor SS. de liberal. Caus.

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Lastly, the insolvent debtor, condemned by the law of the twelve tables to become the property of his creditor, or, when he had many, to be cut in pieces and divided amongst them,* is only

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* With the Grecians the sale of the insolvent debtor had been in use, as we learn from Plutarch, in the life of Solon (Plutarchi Opera. tom. 1. folio. Francf. 1620) and with the Germans, according to Tacitus (De Moribus German.) notwithstanding their fanaticism for liberty. The latter atrocious act was alone authorized by the Roman law of the twelve tables. "Ac si plures erunt rei, tertiis nundinis partes secanto. Si plus minusve secuerint sine fraude esto. Si volent ultra Tiberim peregre venumdanto."

This horrible fragment has descended to us entire, and it has exercised the ingenuity of many writers. The celebrated Bynkershoek, and some modern civilians, have explained it in a less exceptionable manner, and Taylor in his elaborate dissertation "de Inope Debitore in Partis dissecando," hath defended this construction with great ability and learning. Yet it is very certain that the ancient authors understood the sentence literally. Aulus Gellius has expatiated on the punishment "Nisi pacti forent, habebantur in vinculis dies sexaginta. Inter eos dies, trinis nundinis continuis, ad prætorem in comitium producebantur, quantæque pecuniæ judicati essent, prædicabatur. Tertiis autem nundinis capite pœnas dabant, aut trans Tiberim

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reduced to the cession or surrender of his property. These are the general laws of nations, and the civil law hath been improved and softened by the mildness of religion. Devoutly is

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peregre venum ibant. Sed eam capitis pœnam sanciendæ, sicut dixi, fidei gratia horrificam atrocitatis ostentu novisque terroribus metuendam reddiderunt. Nam si plures forent, quibus reus esset judicatus, secare, si vellent atque partiri corpus addicti sibi hominis permiserunt: et quidem verba ipsa legis dicam, ne existimes invidiam me istam forte formidare. 'TERTIIS.' inquit, 'NUNDINIS. PARTIS. SECANTO. SI. PLUS. MINUS. VE. SECUERUNT. SE. FRAUDE. ESTO.' Nihil profecto immitius, nihil immanius; nisi, ut re ipsa apparet, eo consilio tanta immanitas pœnæ denuntiata est, ne ad eam umquam perveniretur." A. Gell. Noct. Attic. lib. 20. cap. 1.

In this dialogue a philosopher who exclaims against the punishment, and a civilian who approves of it, are introduced, but they seem not to entertain any idea whatever of it being allegorical. Tertullian likewise by the expression of " Sed et judicatos retro in partes secari a creditoribus leges erant" (Apoll. cap. 4. 52, 53. L. B. 8° 1718) which was intended as a reproach on the Pagans, and the Roman laws, seems to have had no doubt on the subject, and as these ancient writers lived nearer the times of the law in question, it may be reasonably presumed, they were better able to explain it.

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it to be wished that our legislators had wholly drawn their laws from its sacred principles! Superstition would not then have stained our codes so frequently with human blood; and slavery, proscribed in Europe, would not have crossed the Atlantic, to establish itself under the protection of those very laws which had already banished it. The frightful shores of Senegal would not have been converted into a market, where the civilized barbarians of Europe barter for the inviolable rights of humanity and reason. Burning and insatiable avarice would not have traversed oceans to purchase amidst the sands and tigers of Africa human victims; and the mariner would not so frequently have had occasion to blush over the melancholy fate of his cargo of Cato s, who prefer independence to life, and death to slavery.

Notwithstanding Europe has been so fully sensible of the mild influence of christianity, and its laws have spoken so decidedly in favour of personal liberty, European America still abounds with slaves. Its legislature is not only silent on this shameful abuse, but protects the traffic; and

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in the immense space of that vast continent, a little nation of heroes is only visible, who have had the virtue to rescue themselves from this violation of the rights of nature, and the execration of posterity. Pennsylvania is the single province which has no longer any slaves.

The progress of intellectual knowledge and philosophy, with the personal merits of the present sovereigns of Europe, give us room to hope that the provinces of their different governments will follow the example. Our codes of law will then be more analagous to the principles of nature and revelation, and our triumph over those of antiquity will be more decisive.

CHAP. V.

OF THE RELATIVE GOODNESS OF LAWS.

THE diversity of characters, genius, disposition, and inconstancy of men, communicate their influence to political bodies, just as the defects of

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a particular part affect the whole. Nations do not resemble nations, one government is not like another, and it appears that nature, desirous of shewing her grandeur in a rich variety of physical productions, is not less anxious to display her prodigies in the diversity of moral bodies.

Each government has its own peculiar impulse, from which it acts; but that impulse, which forces it into action on some occasions, in others leaves it in inaction. The manners of the present age will differ from a succeeding one, as they differ from those of the age which is already past. In the same manner the interests of nations change with the generations of mankind, and a few years, or the distance of a few leagues, may be sufficient to convert into a public inconvenience or injury, what at another time, and in another place, would have been a public benefit. We may therefore lay it down as an axiom, that the laws ought to follow this tremulous vibration in political bodies, and correspond in some measure with their variations.

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A celebrated legislator entertained an antipathy to riches; banished gold and silver; prohibited commerce; established a perfect equality of conditions, and to preserve it regulated marriage portions, and the succession of fortunes; destroyed property; vested the soil in the republic, distributing only a certain part to the father of a family for his immediate use; condemned luxury; attached a species of reputation and honour to frugality; degraded manufactures; directed the earth to be cultivated by slaves, and declared that the sole occupation of the free citizen should be to strengthen his body, and acquire the arts of war. He immersed the people in a military state of idleness, and to prevent its fatal consequences attended to their minutest actions. Their food, their meals, and even their public conversation, were objects of public animadversion, and determined by the laws. Martial dances, feats of activity, races and wrestling, and every exercise which could invigorate the body, or prepare it for the fatigues of war, formed the public and the principal amusements of the people. Aware of the ill effects of an irregular

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commerce between the two sexes, he proposed a remedy so extraordinary as to seem rather to encourage what it was intended to prevent. The young women were to appear in public without veils, and they wrestled completely naked with the young men, on the idea that to take off natural impressions, the best method was to expose nature to the public eye. The event justified the theory. This republic became the admiration of the universe, and preserved its astonishing state of happiness and power for six hundred years.

The legislator of a neighbouring state, separated only by a few leagues, thought very differently. His laws protected commerce; fostered the arts; encouraged agriculture; promoted labour, and introduced riches. Conscious of the natural sterility of his soil, industry was resorted to for its powerful assistance. Every citizen was obliged to exercise a trade; and the support of a father in his necessities was dispensed with, if he had not taught the son a mode of procuring his maintenance. The most respectable citizens

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had the care of inspecting the means by which each individual provided for his own and his family's subsistence.* All were employed in the occupations which they had chosen, and the right of citizenship was bestowed on foreign artists, who came to settle in the republic with their families. Every thing in short favoured the arts. Idleness was punished as a crime; and even the women became laborious and sedentary, for the laws required it. This celebrated legislator was of opinion, he could prevent the corruption of morals, and secure the virtue of the female sex, in the midst of the riches which he studied to introduce, and of luxury, the consequence of riches, by the mere force of industry and labour.

His republic, under the influence of these laws, became likewise happy, rich, and power-

* Ejusdem urbis sanctissimum consilium Areopagus, quid quisque Atheniensium ageret, aut quonam quaestu sustentaretur, diligentissime inquirere solebat; ut homines honestatem, vitæ rationem memores reddendam esse, sequerentur. Valer. Maximus. lib. 2. c. 6.

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ful, and though it could not preserve its laws for six hundred years, like Sparta, it had at least the singular glory of surviving the Lacedæmonian liberty.

It may be asked, whether of these two contrary systems was entitled to the preference?—It was not possible for Sparta to have a better code than that given her by Lycurgus, nor Athens than that of Solon. The effects of these two systems were the same, notwithstanding the difference of the two causes. Each was peculiarly adapted to its own republic; and this relative propriety between the laws and the state of the nation, which receives them, is relative goodness.

CHAP. VI.

OF THE DECLINE OF CODES.

If the best system of legislation be that which is best adapted to the nation where it is to be introduced—if the whole relative goodness of laws

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consists in their strict and intimate connection—if two opposite legislative systems may be useful to two different nations—if the situation of a nation changes with circumstances—if a nation can pass from poverty to riches, and from riches to poverty—if the loss or acquisition of a province vary the interests of a people—and every little alteration in the constitution of a government may be able to produce a similar alteration in the national character, there can be little doubt the best legislative system in the world may become the worst; and the most advantageous one for a people, at one period, may be the most destructive one to the same people at another. We need only appeal to the history of Rome and her laws, in order to verify the reasoning.

Rome, destined to perish in the morning of her days—Rome, equally unable to submit to the scourge of despotism, or to enjoy the blessings of pure and temperate liberty*—Rome had scarcely

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* Nec totam servitutem pati possunt, nec totam libertatem. Tacitus. Hist. lib. 1, Sec. 16.

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banished the Tarquins, before she was a prey to civil commotions, and exposed to all the dangers of anarchy, from the eternal opposition of her two factions of the nobles and the people. To have secured peace within her own walls she ought always to have been engaged in foreign war. Her wisest legislators were perfectly masters of this truth. Conquest was for this reason their great object, and such a system was the only one they could have adopted, fit, at this period of their history, for the Romans. They took therefore all possible pains to interest the citizens of every denomination, and every order of the state in continual hostilities. To the soldier they held out plunder. Amongst the individuals left at home, part of the grain and provisions raised from the contributions of the conquered countries was regularly distributed, and to these incentives honours and rewards were added. Crowns and chaplets, the ornaments of priests, of sovereigns, and of the heathen deities, were with the Romans the recompence of courage, victory, and conquest. They were indeed of various kinds, and the least respectable was that of laurel, which

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was bestowed on the person who had made peace with an enemy.* The spirit of their legislation was admirably preserved, even in the distribution of this particular badge of honour. Peace received with them the least respectable distinction, because peace was what they least desired.

The honour of a triumph was the summit of consular dignity, and to inspire their consuls with the zeal for the honour of a triumph, it was not to be obtained without a signal victory, or some previous and important capture. The priesthood, as avaricious in Rome as in every other country, where fanaticism has usurped the place of true religion, found also its advantage in a state of war. As the worship of the deities of the van-

* The triumphal crown was also of laurel, but it was only given to those generals who had gained some signal battle, or conquered a province. This was the most honourable reward, and Claudius Pulcherius Ann. Urb. Cond. 569 introduced some gold into it, to distinguish it from the crown given to the person who had negotiated a peace, which was considered as an object of inferior moment.

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quished countries was incorporated in the national religious rites, and the Romans thought they made ample amends for their outrages to other nations, by the introduction of their tutelary divinities, their priests saw the fruitful sources of their wealth, new temples, new offerings, and new deities multiply in exact proportion with their conquests. The citizen then, whose duty was obedience, the consul who commanded, and the magistrate at the head of the civil department of the state, he who handled the spear and the shield, and he who scattered incense before the statues of the gods, considered war as the foundation of his hopes.

This sublime combination, or wonderful union of the interests of the whole community, naturally engaged it in foreign contentions. External hostilities had, however, a nearer and more domestic influence. They preserved the public internal tranquillity, by keeping the public mind always occupied and dazzled with the national glory, though they were attended with one fatal consequence. The Romans had at last no ene-

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mies to conquer, and as their legislation had been formed for a precise period, it was exactly calculated for the support of their internal peace and liberty, under the auspices of war. Deprived of this resource, it soon proved to be incompatible with the new state of government, and the republic having no longer a foreign enemy to engage its attention, plunged into the gulph of civil discord, which its laws were not able to prevent, and lost its liberty,* in tumult and convulsion.

The best codes of law may have therefore their revolutions, and the very systems which have raised a people to opulence and grandeur, may not be sufficient to secure them in their splendid situation.† This phenomenon has been

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* The former part of the observation appears to be particularly applicable to the modern French Republic: whether the latter may be equally so, we have yet to learn.

† Locke was perfectly aware of this truth, and in the laws which he proposed for Carolina, he directed a review of her legislation after a hundred years. In this manner philosophical legislators have thought and reasoned.

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made apparent from the Roman legislation, and we shall meet with many other instances in that of more modern governments. One distinction is however very necessary to be made. Sometimes these revolutions arise from a defect, merely of a part, at others the whole is faulty. In the first case, the venerable fabric of antiquity may be preserved in full strength and beauty, with a few trifling alterations; in the second, an entire new structure must be raised from the ground. The former of these enterprises may not be a work of much difficulty, obstacles almost innumerable obstruct the latter.

CHAP. VII.

OF THE OBSTACLES IN A CHANGE OF THE LEGISLATION OF A PEOPLE, AND THE MEANS OF SURMOUNTING THEM.

If the legislature persuade at the time it acts—if the public inclination be attended to in the formation of laws—if their spirit be inseparable

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from that conviction of the public mind which produces a regular, voluntary and cheerful obedience—if the alterations which may be necessary, seem to be even inspired by the public voice, and to meet the general wish—if to act without any regard to the public inclinations, and without collecting the majority of the public sentiments, be an error which alienates the hearts, and influences the passions of the community; which makes it suspicious of every thing, and averse to the most beneficial propositions—if, in a few words, a change of the legislation of a country be a work of peculiar difficulty, from the suspicions of ignorant, the clamours of interested individuals, which are often so obstreperous as to overpower any effort for the public good, and from the blind veneration of the lower classes of the people for every thing with the marks of antiquity, and their repugnance to every novelty; the obstacles must be numerous indeed, whenever an attempt is made to abolish an established legislative system, and introduce a new one, more analagous to the immediate situation of the state.

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The first step to be taken is to create in the public a wish for the proposed reformation. A change in the constitution of a country, is not the work of a moment, and to prepare the way for it, the inclinations of the people should be gradually led towards it. They should be made fully sensible of the inefficacy of their established laws, and be convinced their hardships and oppression are owing to them. The ablest writers should be employed to state the errors and inconveniencies of the old system, and the propriety as well as the necessity of abolishing it, and adopting a more advantageous one. When these efforts are successful, and the public wish is united with the force of government, one of the greatest obstacles is surmounted, and there is no reason for any further apprehensions from a passionate and ungovernable attachment of the multitude to their ancient usages.

Many political writers have in fact already exercised themselves on this subject, and endeavoured to enlighten the public mind, and dissipate its ignorance. The crude and undigested state of the

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legislation in some of the European governments, has been painted with great ability in its true and sombre colours. Composed of the laws of a people at first free, but afterwards slaves; compiled by an opiniated civilian, in the reign of a feeble emperor; confounded with an immense number of local and contradictory edicts, with the decisions of courts frequently eluding those very edicts, and with a variety of barbarous customs originating in the ignorance or caprice of feudal anarchy, and incompatible with the revolutions to which the world has been subject; this heterogeneous system requires little trouble to bring it into disrepute. It has lost indeed its hold upon the public mind so much, that except the ecclesiastical courts, who consider its records as sacred as the mysterious oracles of the ancient Sybils, there is not perhaps a single person that does not wish for its reformation.

When this first step is taken, another naturally follows. Having prejudiced the public opinion against its ancient laws, it should be inspired with a confidence in the proposed ones, and the arguments intended to produce this necessary

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predilection ought to be plain and striking, and, in some degree, flowing from the public sentiments.—It might be a dangerous error to entrust this important task to a single person. The united labours of a numerous body of men of the first talents and characters, and possessed of the popular esteem, would greatly facilitate the work; and whilst it silenced any invidious suggestions, would create a respect for their joint productions. Expedients of this kind have been resorted to in all nations, under all governments, and in all ages, and it appears from experience that they have seldom failed.

At Athens a new law was not to be proposed to the people, before it had been approved of by the senate. With this previous approbation it was laid before an assembly of the people, a copy of it fixed at the feet of the statues of the ten heroes, that every citizen might be acquainted with its purport; and every citzen had a right also of submitting his sentiments on the propriety of it to the senate. A second assembly of the people was then convened, the proposed law

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was read to them, and provided no material objections were urged against it, the assembly, along with the Prytanes, who presided on the occasion, and the Nomothetæ, were finally to determine, as sovereigns, if the new law should pass.* These Nomothetæ were selected out of the judges, who had taken the Heleastic oath, and were a set of men in whom the people had the most unbounded confidence.† In this manner the senate, the people, and the ablest counsellors were to exercise their judgment on every new law in Athens, and this Athenian custom has been adopted by the government of Venice.

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* Petit de Legibus Atticis. lib. 1. tit. 1.

† Filangieri has referred his readers to Julius Pollux (lib. 8. c. 10) and Stephanus Byzantinus, for an explanation of the word "Ηλιαια;" but Meursius, in his description of the Areopagus, has given the fullest account of these magistrates and their office. They exercised their functions "Sub dio," from whence they took their name, and the Ηλιαστων Ορκος, included the solemn declaration, "Ουδε Δωρα δεξομαι της Ηλιαστεως ενεκα, ουτ' αυτος εγω, ουτ' αλλος εμοι, ουτ' αλλος ειδοτος εμι, ουτε τεχνη, ουτε μιχανη μεδημιχ." J. Pollux. lib. 4. tit. 1.

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Every new law first underwent the serious and mature consideration of the doge and his counsellors, it then remained eight days openly exposed to public investigation, and was afterwards proposed to the senate, whose consent is alone sufficient to pass any laws in other aristocratic states. The counsellors in Venice have likewise a near resemblance to the Nomothetæ of Athens, and are supposed by the people to be persons of enlarged minds and of incorruptible integrity and honour.*

Reflecting on the political history of nations, we shall find the wisest legislators have always had recourse to a certain mysterious solemnity to overawe the public mind. Homer informs us that Minos visited every nine years the cave of Jupiter, to impose on the common people a belief

* The Wittenagemot of the Anglo Saxons had a striking resemblance with the council of Venice, in which the laws were previously examined that were to be proposed to the people.

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that the laws which he delivered to the Cretans, originated with the Master of the Universe.* Zamolxis in Thrace,† and Zaleucus in Locris, impressed a similar idea on the people, and Lycurgus was so much persuaded of the necessity of taking advantage of the ignorance and superstition of the lower class of citizens, as to attribute his laws to Apollo.‡ In the Roman annals the names of Jupiter and the nymph Egeria

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* ——— ενθα τε Μινως
Εννεωρ Βασιλευε Διος μεγαλε οαριστης.
Homer. Odyss. T. 178, 179.
Or as Horace has translated it,
Jovis arcanis Minos admissus.
Lib. 1. Od. 28.

† Herod. lib. 4. 324. folio. Amst. 1763.

‡ Δειν εν εκεινης εμμενειν τοις καθεστωσι νομοις, και μηδεν αλλασσειν, μητε μετακινειν, εως επανειεσιν εκ Δελφων αυτος· επανελθων γαρ, ο, τι αν τω Θεω δοκη ποιησειν. ὁμολογησαντων δε παντων και κελευοντων βαδιζειν, ορκως λαβων παρα των βασιλεων και των γεροντων, επειτα παρα των αλλων πολιτων, εμμενειν και χρησασθαι τη καθεστωση πολιτεια μεχρις αν επελθη ὁ Λυκουργος, απηρεν εις Δελφους. Παραγενομενος δε προς το μαντειον, και τω Θεω θυσας, ηρωτησεν ει καλως ὁι νομοι και ικανως προς ευδαιμονιαν και αρετην πολεως κειμενοι τυγχανουσιν· αποκρινομενε δε του Θεου, και τους νομους καλως κεισθαι και την πολιν ενδοξοτατην διαμενειν τη Λυκουργε χρωμενην πολιτεια, κ. τ. λ. Plutarch. Vit. Lycurg. Sec. 29.

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are familiar, to whom Romulus and Numa Pompilius were indebted for their pretended inspiration.

There is a difference, however to be observed between a nation at its birth, and in its riper years. Romulus and Numa knew with what coin they could purchase the reverence of their infant state. Their successors were obliged to change the die, in order to accommodate it to the taste of an adult people. In fact it was an established usage amongst the Romans, even in their most enlightened days, for the consuls, the tribunes of the people, and the superior magistrates, to consult their ablest lawyers* on any alterations of the laws, previous to their laying them before the comitia. From this very circumstance, the attachment of the Romans to their

* Interea laturus legem, sive tribunus plebis esset, sive magistratus major, eam cum prudentibus, ac necessariis suis communicabat, ne civium offensionem incurreret; neve novam legem contra morem majorum proponeret. Gravinæ Opera. tom. 1. 4to. Neapol. 1756.

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ancient laws, is perhaps principally, if not wholly to be derived.

In a northern kingdom, which is at present acquiring an important weight in the scale of Europe, these ideas appear to have made some progress. Catherine,* on the introduction of her new code, an enterprize more truly worthy of a sovereign, than the most extensive views of conquest, called from every part of her dominions her most experienced subjects, to assist her in its formation. Yet this was not all—she left to her kingdom the choice of its delegates, and consequently of its legislators. Under such circumstances not a single peasant could doubt of the value of the new code, or could hesitate a moment on the preference between it and the ancient system.

The last, and probably the best mode of convincing the public mind, is to represent in the

* The late Empress of Russia.

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clearest and most explicit manner the new laws, as the certain remedy for the disorders, which affect the public at large, and are most oppressive to it. In our days, this principle governed the councils of a philosophical monarch,* who has been as celebrated in the closet of the scholar, as in the palace and the field. Amongst other wise regulations, the Frederician code has curtailed the length of judicial proceedings in the Prussian dominions, to which the other courts in Europe are still subject, notwithstanding the universal clamour against this abuse. Every process, allowing it to pass through three courts, is to be determined within the space of two years from its commencement, and such a singular institution would of itself have influenced the public in its favour in any other country as well as Prussia. The people feeling themselves relieved from a yoke, which had so long and so severely galled them, would kiss with transport the hand that delivered them, and consider the

* Frederic II. King of Prussia.

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new laws both as instruments of their future comfort and as public blessings.

CHAP. VIII.

OF THE NECESSITY OF A CENSOR, AND OF THE DUTIES OF THIS NEW MAGISTRATE.

THE decline of a legislative system is a political revolution, but a revolution effected slowly, which advances by insensible steps, and takes up ages to reach its termination. It is not, therefore, instantaneous in its nature, and can never be so, except when there is a Tarquin, a Lucretia, or a Brutus, and a whole people at the same time discontented with their government and passionately in love with liberty. With the exception of this particular case, the progress of a revolution in the legislative system is slow, and consequently there is opportunity for its reformation. A censor of the laws appears adapted to the work. A magistracy of this kind, composed of the wisest and most experienced persons in the state, might have

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the greatest influence on the perpetuity of the legal system. As soon as any law became repugnant to the manners, the genius, the religion, or even the opulence of the nation, the censorial chamber, destined to watch over the perpetuity and preservation of the laws, might proclaim the necessity of its reformation or repeal. Every law indeed, notwithstanding any intrinsical excellence which it may possess, is attended with its defects, for they are inseparable from every work of man. Time makes a discovery of these defects, but time neither diminishes nor destroys them, and the government is generally the last to perceive them. With such a multitude of other occupations to distract its attention and employ its care, the errors of jurisprudence make but a feeble impression on it, and are often unobserved. In the mean time the people suffer, philosophers declaim, and the legislature hurries on with enormous strides towards its ruin.

A censor would dissipate these threatening clouds on their first appearance. Devoted to the duties of his office, and with an exact knowledge

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of the state of the nation, he would be able to analyze every cause of its disorders. When the evil and its cause are once discovered, the remedy is always more easy and ready to be found. Let us return for a few moments to the history of a people, whose laws having triumphed over time and philosophy, still retain their vigour in most of the European nations. Let us consult the Romans. They had a censor of morals, and they ought likewise to have had a censor for the laws. Their legislation for a number of years was admirable in the whole, whilst it was always defective in its parts. These defects were not attempted to be removed, and consequently the laws were often contradictory to their manners and the state of the nation. Their sumptuary laws in the days of Julius Cæsar, without multiplying examples, might have been very proper for the second or third age of the Roman people,*

* Lex Orchia, Fannia, Didia, Licinia. A. Gellius hath left us an account of the origin of these laws, "Legi adeo nuper in Capitonis Ateji conjectaneis senatus decretum vetus C. Fannio

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but they remained in force when fifty thousand drachmas were barely sufficient to defray the ex-

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et M. Valerio Messala Coss. factum, in quo jubentur principes civitatis, qui ludis Megalensibus antiquo ritu mutuitarent, id est, mutua inter sese convivia agitarent, jurare apud consules verbis conceptis non amplius in singulas cœnas sumptus esse facturos, quam centenos vicenosque æris, præter olus et far et vinum; neque vino alienigena sed patrio usuros; neque argenti in convivio plus pondo, quam libras centum illaturos. Sed post id senatus consultum lex Fannia lata est, quæ ludis Romanis, item ludis plebeis et Saturnalibus, et aliis quibusdam diebus, in singulos dies centenos æris insumi concessit, decemque aliis diebus in singulis mensibus tricenos; cæteris autem omnibus diebus denos. Lex deinde Licinia rogata est; quæ cum certis diebus, sicuti Fannia, centenos æris impendi permisisset, nuptiis ducenos indulsit; cæterisque diebus statuit æris tricenos; cum et carnis aridæ et salsamenti certa pondera in singulos dies constituerit: si quicquam esset natum e terra, vite, arbore; promiscue atque indefinite largita est."—A. Gellius. lib. 2. c. 24.

There is a sumptuary law in our statutes, 10 Ed. III. to restrain the expence of entertainments, which directs that there should not be for dinner or supper more than two courses, and not above three dishes in each course, and expressly declares that SOUSED MEAT is to be considered as one of these dishes. Stat. 3. 10 Edw. III.

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pence of a supper given to Cicero and Pompey by Lucullus, who had not received any previous notice of their intended visit. In the midst of the eternal noise and riot of a crowd of slaves and servants who regularly attended the citizens, the laws prescribed a frugality which was universally despised, and which the riches of the nation rendered almost impossible to be observed. A censor under such circumstances must have perceived the necessity of abolishing the laws then in force, and of adopting others more appropriated to the nation at that period.

Another advantage to be reaped from the office is the prevention of a multiplicity of laws. It is scarcely possible for the legislature to have before its eyes on the promulgation of any law every particular case, that should be included in it, and the omission of a single case may render the whole imperfect. No means of preventing these inconveniences have been yet found, and the present systems of government in Europe seem still to be greatly at a loss on this subject.

The moment an evil appears, a new law is

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immediately introduced. Its object is to apply to a particular case, though the old laws might be extended to it with a trifling alteration, and an addition sometimes of a few letters. It is the fate, however, of legislation to hasten forwards without ever turning to look behind her. This is the origin of an immense number of laws which oppress the courts of Europe, and render the study of its jurisprudence as laborious as that of the Chinese language, which is scarcely to be learnt in twenty years.*

To these duties of the censor may be added that of supplying the defects of the laws, by rendering them applicable to those minute cases, which the legislature could not comprise without swelling its laws to a monstrous and useless bulk. In

* This subject was discussed with great acuteness by Filangieri in a little treatise under the title of "Riflessione Politiche su l' ultima legge del re, che riguarda le Reforma nell' Administrazione della Giustizia." Many of the observations are certainly of a local nature, but there are others well worth the consideration of the ministers in every government.

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this manner the legislative system might be continually corrected and reformed in all its points, and acquire a stability and perfection, which might secure it against the outrages of time, and the convulsions which frequently agitate political bodies, and are perpetually changing the face of society. We should not then see so many laws of exception for one of principle; so many explanatory ones instead of a few fundamental ones; nor so many new ones in direct contradiction to the old ones. Codes of law which are now a chaos of confusion, would be then monuments of order, and a series of uniform principles connected together, and directed to one common end.

The Athenians were sensible of the necessity of such a magistrate, who might always have his eye on their legislation, and it was the principal duty of their Thesmothetæ. They were charged with the continual review of the laws, to examine if there were any contradiction in them—if more than one were directed to the same object—if there were any ambiguity in the forms or language—and to lay before the people the correc-

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tions and alterations that were in their opinion necessary.* On the eleventh day of the first Prytany in every year they read to the people all their laws, and if any defects were discovered, the consideration of them was deferred to the last day of the Prytany, and during the interval the Nomothetæ were directed to investigate the object under contemplation, and report their opinions to the people. With this assistance and instruction the people then entered on the business.

CHAP. IX.

OF THE RELATIVE GOODNESS OF LAWS, AND THE FIRST OBJECT OF THIS RELATION, THE NATURE OF THE GOVERNMENT.

It has been observed that the relative goodness of laws consists in their relation to the state, where they are to be carried into execution.

* Potter's Archæologia Græca, vol. I. 77.

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Various circumstances have, however, an influence on every state, though the most material of them is the nature of its government. Notwithstanding the diversity of governments, a specific definition of each will be unnecessary. The least instructed reader needs not be informed of the difference between a popular and an aristocratic state, and of the immense space which separates a republic from a monarchy.

Admitting the same difference in the disposition of the people in these different governments, it will be readily agreed that the laws proper for one cannot be adapted to the others. The people, as an instance, in a democracy are sometimes the sovereign and sometimes subjects.* They create the laws, elect the magistrates, and name the judges; but afterwards, whatever may be their inclinations, they must obey the laws, and are liable to be punished or acquitted by the magis-

* Some of these principles have been adopted by Montesquieu, and established by many politicians before him.

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trates and judges of their own appointment.—These laws, therefore, considered under these two aspects, would be useless in an aristocracy or monarchy, where the people are only subjects.

In a democracy, as the supreme power is in the hands of the whole nation, and the sovereignty, which in other governments is confined within the walls of a palace, is not visible but in the public; and lastly, as where the people reign a single individual is of himself nothing, but united with his fellow citizens, every thing, the first object of the laws will be the regulation of the public assemblies, and the number and condition of their members. This regulation did not exist with the Romans, and the want of it proved a fruitful source of political misfortunes.

In aristocracies and monarchies the right of citizenship is a simple privilege: in a democracy it is a portion of the sovereignty. An individual in the two former governments partakes but of the advantages attached to his situation; in the latter he may intrude into the public assembly, and

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raise his hand and voice in favour of a measure which might occasion the ruin of the state. The laws therefore in a popular government ought to be vigilant in guarding against this danger; more jealous of bestowing the rights of citizenship, and more severe in the rigid punishment of any fraudulent usurpation of it.*

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* In Athens the title of citizen was only granted by the whole people, and it was to be even ratified by a second assembly of at least six thousand citizens. (Demosthenis Oratio in Neæram). Birth alone within the republic did not give this rank, for it was requisite that one of the parents should be a citizen, and that both should be free. The title, however, might be obtained by adoption, when the father was a citizen by adoption. The "ληξιαρχικον γραμματειον," or register of the names of the citizens, was religiously preserved, and the præfect of every quarter of the city was charged with the duty of inspecting and revising it. The usurpation of the right of citizenship, without any title to it, was a serious offence, and if the fact was proved, the person who had fraudulently exercised the privilege was sold as a slave. Petit, in his Commentary on the Laws of Athens, has given us this ordinance, and ably explained it. Petit. Comment. in Leges Att. lib. 2. tit. 3. 209.

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Another object in a popular government, is to determine in what manner the votes of an assembly are to be given or collected. When public, they are freest from corruption; the questions for deliberation are more fully discussed; and finally, when public, the people have the benefit of the sentiments of the principal citizens, are kept within due bounds by their wisdom, and have an additional guard against the double sacrifice of their virtue and the welfare of their country.

Cicero complains, and complains with justice, of the contrary practice in the Comitia at Rome.* Great part of the citizens, sheltering themselves under the privilege of giving their votes in secret, did not scruple to commit the most atrocious acts of injustice, under the very security of their free-

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And Sigonius tells us the principal office of the ὑβριστοδικαι was to inform themselves monthly of the names of the children of strangers, and to prevent their being registered as citizens.

* Cicero de Legibus. lib. 3.

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dom from the reproaches which they justly merited. What durst not be pronounced, was unfortunately written without hesitation when there was no fear of a discovery; for, to the disgrace of humanity, we seldom blush at failings known only to ourselves! Secret votes in a republic are for this reason a proof of the want of liberty. Where truth is afraid to raise her voice, virtue is timid, power is bold, a spirit of intrigue and cabal insinuates itself into every public assembly, and the concealed, though tyrannical hand of despotism, shuts up the lips of liberty, and stifles her exertions for the public interest.

After the regulation of the votes in popular assemblies, the laws ought to divide the citizens into several classes. Such a division has always engaged the first care of legislators; and it both contributed in a high degree to the grandeur of Athens, and hath always had the greatest influence on the duration and prosperity of democracies.

They ought likewise to determine in what

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manner, and by whom any new laws are to be proposed to the public for their approbation; the requisites for every citizen to speak in the public assemblies; to what subject he should be confined; to guard against the seduction of the people by the inflammatory harangues of an interested or corrupted orator; and lastly, to secure this species of liberty with the good order of the state.* The laws ought at the same time to provide a remedy for the delays inseparable from a popular government, which, though sometimes useful, on momentous and pressing occasions may endanger the ruin of the nation. The two kings were the remedy introduced in the government of Sparta, the archons in that of Athens, and at Rome a dictator.

Lastly, a popular government wants, like monarchy, a council and a senate. It wants a chief

* The laws of the Athenians were directed to all those different objects, as may be collected from Petit. Leges Atticæ. lib. 3. Tit. 3 De Oratoribus.

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to command it in time of war, and it should have its magistrates and judges, whom it should elect. The laws should ascertain the precise mode of proceeding in such elections, and decide what employments ought to depend on choice or lot, since every member of a popular government should have the hopes of serving his country in one station or another.* The distribution of offices by lot is notwithstanding attended with its dangers, which may be destructive to the republic. The laws on this account should, like Solon, provide the proper means of preventing the disorders arising from this mode of election. He directed those citizens only to be elected who had made a voluntary tender of their services; that the candidate after his election should submit to an examination by the judges; and that every citizen might accuse him of the want of abilities or the want of merit. The same herald who

* In Athens the magistrates chosen by suffrage or the χειροτονηται, were distinguished from the κληρωτοι, who received their appointments by casual lot.

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announced the candidate on whom the lot had fallen, demanded aloud if any person had any objection* to him. An appointment of this nature partook of the united advantages of an election by choice and one by lot. These are the principal objects which constitute the relation of the laws with the nature of a democratical government, and these are the rules to be deduced from them.†

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* Τις βελεται κατηγορειν. Æschines in Ctesiphontem.

† From the principles which have been laid down, it appears that a perfect democracy cannot exist but in a small state. If the republic increases, and from a city becomes a nation, the constitution must be entirely changed, or recourse must be had to representation. Every city and every village should nominate its representatives, to exercise the legislative power in the name of the people, because they can no longer meet as they did originally.

When the cities of Italy were incorporated with Rome, their citizens had the right of suffrage; but the tumults that afterwards attended the elections and public deliberations, and the impossibility of distinguishing the citizens who had a right to vote, from those who had no such privilege, and all the other

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In an aristocracy, the sovereign authority resides in the hands of a certain number of persons. This body of the principal citizens or nobles is that which makes the laws and executes them. The rest of the people, Montesquieu observes,* has the same relation to the nobles as the subjects to the sovereign in a monarchy, but the great

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inconveniencies which arose from this incorporation, furnished Marius, Sylla, Pompey, and Cæsar, with opportunities of destroying the liberties of their country, and overturning the republic. Appian (De Bello Civil. lib. 1) has traced the progress of these disorders; and V. Paterculus, in allusion to them, reckons a law of Gracchus to be "inter perniciosissima quod extra Italiam colonias posuit." Hist. Rom. lib. 2. c. 15.

The same hands, as a late writer on the Roman constitution has observed, which assisted in extending her dominions, made them too bulky for the narrow compass of democracy to superintend and govern. Bever's Legal Polity of the Roman State. ch. 1. 107.

* Le reste du peuple n'est tout au plus a leur egard, que comme, dans les monarchies, les sujets sont a l'egard du monarque. De l'Esprit des Loix. liv. 2. c. 3.

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author's observation is not here correct. In a monarchy the sovereign leaves to the subject the executive authority; whilst in an aristocracy the people have not any share either in the legislation or the executive functions. All the three powers are united in the nobles, and this partial distribution of the whole authority of the state, necessarily exasperates the people against the body that represents the sovereignty. The laws, therefore, ought to offer the people a compensation for their political non-entity, which might reconcile them to their situation. They should flatter them with the expectation of entering into the class of the nobility, either as a reward for some important services to the state, or on the payment of a certain sum. The latter regulation prevails at Genoa, and the hope of being one day admitted amongst the nobles, forms the whole happiness of the people.*

* The law from which this custom took its rise is perfectly equitable and analogous to the nature of the government. It directs that one family should be annually chosen out of the

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There is another advantage from this circumstance. If the maxim be a true one, that aristocracy is weakened and becomes corrupt as the number of the nobles diminishes—if it should be as popular as possible—if it be most perfect when it borders the nearest on democracy, like the aristocracy established at Athens by Antipater;* and time, by the destruction of the aristocratic families, is equally destructive to aristocracy itself; the laws which supply these losses, and prevent these evils, will be the most necessary and best adapted to this government. As its spirit does not admit the people to the smal-

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body of the people, to be ennobled, and that the election should alternately be made from the plebeian families in the city and those of the Riviera. This law is not, however, observed very strictly. The election is no longer annual, and is not made without the payment of a very considerable sum of money, or some meritorious services. Yet as the hope and expectation still remain, they have their influence.

* Antipater directed that every citizen in possession of two thousand drachmas, should have the right of voting. Diod. Sicul. lib. 18. 637.

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lest share in the government, they should also be particularly attentive to a proper distribution of power amongst the nobles. They ought to fix with precision the several duties of the whole body of the nobility, those of the senate, and the magistrates. Without such a regular and distinct arrangement, disorders must prevail in every department, and an aristocracy would prove to be the very worst species of government,* because anarchy is more horrible and destructive than even despotism itself.

* It is impossible for a government to be more defective than one where the authority is divided, and the parts of the state in possession of it are ignorant of their own power. Such was the deplorable state of Sweden previous to the reign of Gustavus Vasa. The jarring pretensions of the king, the clergy, the nobility, the different cities, and individuals, formed a species of chaos which must have occasioned a hundred times the ruin of the country, if the neighbouring governments had not been as deeply immersed in the same barbarism. Gustavus Vasa, by the union of most of these privileges in his own person, created a despotic government; but Sweden was less wretched under the despotism of Gustavus Vasa, than in its former anarchy.

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When this prudent distribution has taken place, the laws should secure its continuance. They should create a magistracy, for the express purpose of maintaining an equilibrium between the parts of government; and in all well regulated republics, aristocratical as well as democratical, this necessary restriction has been adopted. It was the office of the Ephori at Sparta, and is one of the horrible functions of the council of ten, and the state inquisitor at Venice.* Bounds are notwithstanding absolutely requisite to be set to this authority, or the remedy will be worse than the disease, and the laws should define its duties, and circumscribe its power in such a manner, that if there were even the inclination, there should not

* If this magistrate had been continued in Rome, the decemvirate would neither have been omnipotent, nor would the power of the consuls and tribunes have been suppressed during the government of these ten legislators.—The appeal to the people would not have been taken away, the functions of the magistrates been suspended, and Appius Claudius could not have terrified at the same time, the senate, the patricians, and the people.

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be an opportunity of abusing it. Exorbitant authority, in the hands of a single person in a republic is the worst of evils. In the words of Montesquieu, " Une autorité exorbitante, donnée tout a coup à un citoyen dans une république, forme une monarchie ou plus qu' une monarchie: dans celles ci, les loix ont pourvu a la constitution, ou s' y sont accommodées; le principe du gouvernement arrête le monarque: mais dans une république, ou un citoyen se fait donner un pouvoir exorbitant, l'abus de ce pouvoir est plus grand; parce que les loix, qui ne l'ont point prévu n' ont rien fait pour l'arrêter."*

The most efficacious method of preventing this inconvenience, is that of restraining as much as possible the duration of the office, for in proportion as its powers are great, they should be short.

The Roman laws were admirable in this respect. The dictator, to whom the fate of the

* De l'Esprit des Loix. liv. 2. c. 3.

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republic was confided, who was without a superior, and knew no power above his own, in whom assassination was lawful,* exercised his authority not a moment longer than the circumstances of the republic rendered it absolutely necessary.†

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* Livy has recorded a memorable instance of the power exercised by the dictator's lieutenant, or master of the horse.—"Missus ab Dictatore Servilius magister equitum ad Mælium, 'vocat te,' inquit, 'Dictator.' Quum pavidus ille, quid vellet, quæreret; Serviliusque causam dicendam esse proponeret, crimenque, à Minucio delatum ad Senatum, diluendum: tunc Mælius recipere se in catervam suorum, et primum circumspectans, tergiversari: postremo, quum apparitor jussu magistri equitum duceret; ereptus a circumstantibus, fugiensque, fidem plebis Romanæ implorare, et opprimi se consensu patrum dicere, quod plebi benigne fecisset. Orare, ut opem sibi ultimo in discrimine ferrent, neve ante oculos suos trucidari sinerent.—Hæc eum vociferantem assecutus Ahala Servilius obtruncat: respersusque cruore obtruncati, stipatus catervâ patriciorum juvenum, Dictatori renuntiat, vocatum ad eum Mælium, repulso apparitore concitantem multitudinem, pœnam meritam habere. Tum Dictator, 'Macte virtute,' inquit, 'C. SERVILI, ESTO, LIBERATA REPUBLICA.'" T. Liv. Hist. Roman. lib. 4. c. 14.

† When the war, or the event which occasioned the appointment, terminated in less than six months (for the office was limited to that period) the dictator usually resigned, but

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He had neither time to form ambitious views, nor leisure to render his power dangerous or de-

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this resignation was voluntary. Some civilians and political writers have supposed from this circumstance, that the office was a dangerous appointment, and depended as to its duration on the person invested with the dictatorship. But they have mistaken the power the dictator possessed of remaining in office to the end of the six months for which he was appointed, and imagined he was not also removable after this period. Both Dionysius Halicarnassus (lib. 5) and Dion Cassius (lib. 36) have ascertained the fact, and if their evidence wanted any additional authority, the strongest of all authorities may be produced, the law itself. "Populo deinde aucto, cum crebra orirentur bella, et quaedam acriora a finitimis inferrentur, interdum, re exigente, placuit majoris potestatis magistratum constitui: itaque dictatores proditi sunt, a quibus nec provocandi jus fuit, et quibus etiam capitis animadversio data est: hunc magistratum, quoniam summam potestatem habebat, non erat fas ultra sextum mensem retinere." Leg. 2. Sec. 18 de Orig. Juris.

From the last passage of the last sentence it plainly appears the office expired at the end of the six months. The senate, however, sometimes extended its duration to a year, but this was a fatal error, and, as Machiavel has observed, "LA PROLUNGAZIONE DE GL' IMPERI, FECE SERVA ROMA." Discorso sulla prima Deca di Livio. lib. 3. c. 24.

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structive to the laws or liberty;* whilst the censor, whose office required more austerity than talents, who had a greater empire over the manners than the public force, and was feared rather by the citizen than the republic, retained his employment for five years.† On the same principles their consuls, the prætors and the tribunes, were elected annually, because from their importance they might have laid a foundation for parties in the state.

The Cretans, not satisfied with these common precautions against the excesses of authority, went still further, and allowed of insurrections. As soon as their supreme magistrates abused their

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* Sylla first rendered the office of dictator permanent, and Cæsar in the same person, but this was an act of usurpation expressly forbidden by the laws, and the ruin of the constitution of the republic was almost its immediate consequence.

† The dictator Mamercus restrained it to eighteen months. See Machiavelli Discorso sulla prima Deca di Livio. lib. 1. c. 49.

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rights, the citizens rose in a body,* degraded them, and reduced them to the common mass of the community. Extraordinary as this expedient might be, it was considered as legal, and though it must have been attended with very pernicious consequences in any other government, it had the most beneficial effects in Crete, either from the nature of its constitution, or the patriotism which ran through every class of its inhabitants.†

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* Ην δε ποιουνται της αμαρτιας ταυτης ιατρειαν, ατοπος, και ου πολιτικη, αλλ δυσευτικη· πολλακις γαρ εκβαλλουσι συσταντες τινες της Κοσμους, η των συναρχοντων αυτων, η των ιδιωτων. Aristot. de Repub. lib. 2. c. 10.

† Yet Aristotle was aware of its impropriety. Ταυτα δη παντα βελτιον γινεσθαι κατα νομον, η κατ' ανθρωπων βουλησιν· ου γαρ ασφαλης ὁ κανων· τουτων δε φαυλοτατον το της ακοσμιας ην καθιζασι πολλακις, ὁταν μη δικας βουλωνται δουναι, των δυνατων. Arist. de Rep. lib. 2. c. 10.

The laws of Athens, however, by a solemn sanction gave this power to every individual, on attempts against the liberty of the state. "Ει τις επιχειροιη τυραννειν θανατον ζημιαν." Lex Solon. The "Και τυραννον ου Ψηφιουμαι ειναι" formed also a part of the Heliastic oath. Petit (Com. in Leges Attic. lib. 3. tit. 2) observes on this law. Atque hoc institutum adeo gratum et acceptum fuit Atheniensi populo, ut in illis πατριοις ευχαις, quæ

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Monarchy is a government, where a single person reigns, though with some fundamental laws. These fundamental laws naturally suppose certain channels, through which the power of the government is communicated, and a certain restrictive force, which preserves its moderation and its splendour.

The nature of a monarchy, therefore, requires an intermediate rank of persons between the monarch and the people, though without any power whatever as an equilibrium; and a depository of the laws, as a species of mediator between the sovereign and the subject. The nobles form this equilibrium, and the magistrates are the depository of the laws.

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fiebant pro concione, diris devoveret præco, si quis tyrannidem affectaret: morem expressit lepidissimus Aristophanes in Θεσμοφοριαζουσαις. 342.

Ει τις επιβουλευει τα τω δημω κακον
Τω των γυναικων,———
———ἡ τυραννιδι επινοει,
Η τον τυραννον συκοταγειν———
Κακως απολεσθοι τουτον αυτον κ' οικιαν
Αφανθε.

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The privileges and the rights of the former, and the functions of the latter, should be settled by the laws; and they ought also to limit every species of authority within the state. They ought to declare, what is unfortunately wanting in almost every monarchy of Europe, the real rights of the crown, and the duty of the sovereign who wears it—they ought to ascertain the precise extent of the legislative power—where the executive power begins and ends, and they should likewise ascertain the sub-divisions of the executive power, the different orders of the magistrates, their dependences, the form of appeals, and their respective jurisdictions.

The most trifling acquisition, or rather usurpa-

Mons. de Lolme has observed in his Treatise on the Constitution of England, that we may look on it as a proof of the soundness of the principles on which the English constitution is founded, that it has allotted to the people themselves the province of openly canvassing and arraigning the conduct of those who are invested with the public authority; and that it has thus delivered into the hands of the people at large the exercise of the censorial power. Page 236. 8° 1800.

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tion of the rights of one party by another, is a mortal wound to the state; and as soon as the monarch wishes to be the judge, or the judge the legislator, there is no longer any liberty or security for the nation. Despotism in the magistrates, the nobility, or the sovereign, is equally despotism; and on this account the laws should be particularly anxious to establish with precision, the several objects that have been mentioned. Yet every thing, as has been already observed, is uncertain, equivocal, and obscure on this subject in modern legislation, notwithstanding it is a matter of so much importance, and so much delicacy. Even the first professional talents will often find a difficulty to disentangle truth from sophistry, or distinguish usurpation from right, and violence from justice. In most of the modern controversies, the ablest civilians are overpowered by vulgar prejudices; ransack history for past decisions; appeal to precedents drawn from the ancient customs of nations, as the foundation of their judgments; and confound force, possession, and even usurpation, with right. Neither history, however, nor usage, precedents, concessions, nor

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even charters, can ever give to the magistrates, the nobles, or the monarch, any right contrary in its nature to the liberty of the people, the security of the individual, the general interest of the nation, or the public happiness, which is the first object of all laws. The legislature in a monarchy ought therefore, like that of every other state, to be directed towards these ends and have them constantly in view.

The liberty of the people, the security of the individual, the interest of the nation and the public happiness, require the sovereign in a monarchy to guard the nation against foreign enemies; and for this purpose he has the power of making war and peace, and of determining every thing which concerns the right of nations. He is also to maintain internal tranquillity within the kingdom by clear, simple and precise laws. Though the application of these laws is left to the magistrates, they should have no power of explaining them in a capricious manner, or putting a forced and arbitrary construction on them, under the plausible pretence of adhering to their spirit or their equity;

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and an individual should never see his legislator in his judge, nor his judge in his legislator. He should be perfectly satisfied with the justice of the magistrate's decisions, and that the sentence which condemns or acquits him, is warranted by the law, without being influenced by enmity or favour.

The constitution and the splendour of a monarchy also require a body of nobility, which may reflect upon the nation the lustre it receives from the throne. This body of the nobility should form a separate barrier between the monarch and the people, and weaken the violence of any rude and fatal shocks, which these two bodies might otherwise receive from each other without this intermediate restraint.

To all these objects the care of the legislature in a monarchy should be directed, as they are adapted to correct the vices and prevent the evils to which a monarchial government is always subject.

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Exclusive of these three species of government there is another which is not either a monarchy, an aristocracy, or a republic, but a mixture of these three several constitutions. Such a mixed government, where it is not well regulated by its laws, appears more likely to partake of the inherent vices of each, than of their united advantages.* It has been the fortune of this govern-

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* Polybius remarks, that the best constitution of a government is that in which the three forms of simple and moderate governments are united, and supposes this to have been the very government established in Sparta by Lycurgus. After pointing out the defects of monarchy, aristocracy, and democracy, he adds, "Ο προιδομενος Λυκωργος, ουχ απλην, ουδε μονοειδη συνεστησατο την πολιτειαν αλλα πασας ομου συνθεροιζε τας αρετας και τας ιδιοτητας των αριστων πολιτευματων." Polyb. Reliq. lib. 6. c. 8. a Gronov.

If, however, by the "την απλην πολιτειαν" a government were intended where the people are the legislators, magistrates, senate, judge, and commander of the army in war and peace, the existence of this species of government is an absolute political impossibility. If a government were meant by the expression, where the sovereign power is in the hands of the people, who make the laws, create the magistrates, form a senate of the most respectable individuals, choose one or more

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ment to be more extolled than analyzed. Montesquieu did not perfectly understand it, and it is exposed to a danger which he did not foresee, and from which the other governments are wholly exempt. It may end in despotism, without any visible alteration of the constitution, and the people may one day become a prey to real tyranny without the loss of apparent liberty. This is the government of a nation which for a century has fixed the attention of Europe, it is the govern-

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chiefs to direct their affairs in war, and perpetuate the honour in the same family, in this case the government of Sparta was a simple democracy, and not a mixed government. The two kings, though hereditary, had no authority at Sparta in time of peace, and even in war they were dependent on a council, which often consisted of their greatest enemies, as may be learnt from Aristotle (de Republica. lib. 2). The decrees of the senate had not likewise any force previous to their approbation by the people. Where then was the monarchy or aristocracy?

Polybius has in fact, therefore, written a panegyric on the democracy of Sparta, instead of a mixed government, and the Florentine secretary has been entangled in the same error.—Machiavelli Discorso sulla prima Deca di Livio, lib. 1. c. 2.

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ment of Great Britain, where a good prince is able to do nothing without the consent of the nation, and a bad one might betray it; where the voices of a majority of the representatives of the people do not always correspond with their wishes, and its supposed liberty has in some instances degenerated into licentiousness.

CHAP. X.

OF THE SPECIES OF GOVERNMENT TERMED A MIXED GOVERNMENT.

THE multiplicity and variety of the forms of government, which with or without reason are often included under the name of a mixed government, will not admit of the elucidation of each particular system. It will be perhaps sufficient to discuss that species alone which exhibits the most perfect example of the combination of all the three constitutions which have been already discussed.—All the other mixed governments have apparently a near affinity to it, and this model of a mixed

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government is to be found in the constitution of Great Britain.

A mixed government may be said to be a government where the sovereign power or legislative authority is in the hands of the nation, represented by a public assembly, divided into three bodies—the representatives of the people, the nobility, or patricians, and the king, who ought to exercise it in conjunction with them. The king alone is in possession of the executive power, of every thing dependent on civil right or the law of nations; and he exercises this power with the most perfect independence.

Considering a mixed government in this light, there seem to be three inherent defects in its constitution. The independence of the executive power on the body which ought to be its superior. The secret and dangerous influence of the prince in the assembly of the bodies which represent the sovereignty; and the instability of the constitution. Legislation ought not to change the essence of a constitution; it should endeavour only to

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correct its defects. All the principles, then, dependent on the relation of the laws to the nature of this government should be directed towards a choice of the proper means of preventing these three vices. But before we search for remedies, we should be certain of the existing evils which they are to cure.

In all the three different forms of government, which have been already examined, the several proportions of power are distributed according to their nature, and entrusted to the different hands, which are intended to put them into motion.

These different hands being dependent on each other, their movements are uniform, and their directions are the same. Every little stream flows from one common fountain, and one master-wheel sets the whole machinery in motion. If the sovereign legislator in these several governments be not the executive instrument of the laws, but trust the judicial authority to the magistrates, he has notwithstanding the public force near him, and consequently the proper instru-

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ments of making his orders respected, and of ensuring the obedience of the magistrates to his legal dictates. In this mixed government, however, the only magistrate charged with the execution of the laws, is the individual who has in his own hands the whole force of the nation.—The sovereignty, or in other words, the assembly which represents the sovereignty, may enact whatever laws it pleases, but the person entrusted with their execution is both independent of it, and even more powerful than the sovereignty* from

* If by "il Sovrano" the sovereignty or power of making laws were intended, the idea is perfectly correct, for by the British constitution the legislative authority is vested in the king, lords, and commons, and is not separately possessed by any single branch of these different estates. If the expression was meant to convey a more extended sense, the idea is certainly erroneous, for the law of England ascribes to the king the attribute of sovereignty, and as Blackstone has observed in the words of Bracton, "Omnis quidem sub eo est et ipse sub nullo." Bracton de Legibus. lib. 1. c. 8. This sovereignty, however, is not to be considered as an absolute and unlimited power, for Bracton has himself stated that the king is bound by law, and that "nihil aliud potest rex nisi id solum quod de jure potest." lib. 3. 69.

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which they spring. How alarming would be his negligence! how terrible his excesses!

In a democracy the people, in an aristocracy the body of the nobles, and in monarchies the monarch, may dismiss the magistrate who abuses his power, despises the laws, and arbitrarily disposes of the lives and fortunes of the people. In this mixed government, where the magistrate is the king, and the sovereign is the assembly in which the king forms one of the three component bodies, who ought in conjunction to exercise the sovereignty, where does the right or power of removing him, or punishing him, reside?

It is a maxim of the English government that "the king can do no wrong," and there is not any jurisdiction upon earth to which he is responsible.* If the parliament were to usurp this right,

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* Besides the attribute of sovereignty, the law also ascribes to the king in his political capacity absolute perfection. The king can do no wrong. Which ancient and fundamental

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the national constitution would be destroyed, because the legislative power would usurp the executive power, and by the nature of the government the latter is independent. The fundamental laws of the kingdom carry the idea still further, and declare the person of the king to be "sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary."*

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maxim is not to be understood as if every thing transacted by the government was of course just and lawful, but means only two things. First, that whatever is exceptionable in the conduct of public affairs is not to be imputed to the king, nor is he answerable for it personally to his people; for this doctrine would totally destroy that constitutional independence of the crown, which is necessary for the balance of power in our free and active, and therefore compounded constitution. And secondly, it means that the prerogative of the crown extends not to do any injury: it is created for the benefit of the people, and therefore cannot be exerted to their prejudice. Blackstone's Comm. on the Laws of England. book 1. c. 7.

* All jurisdiction implies superiority of power: authority to try would be vain and idle without an authority to redress; and the sentence of a court would be contemptible, unless that court had power to command the execution of it: but who

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The ablest English legal writers candidly indeed confess their laws have not foreseen the case of a king who might wish to destroy the liberties of the people, and that if such a case should ever unfortunately happen, the only remedy would be one similar to the Cretan insurrections.*

(says Finch) shall command the king? Hence it is likewise that by law the person of the king is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary, for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment. Blackstone's Comment. on the Laws of England. book 1. c. 7. vol. 1.

* As to cases of ordinary public oppression, where the vitals of the constitution are not attacked, the law hath assigned a remedy. For as the king cannot misuse his power without the advice of evil counsellors, and the assistance of wicked ministers, these men may be examined and punished. As to such public oppressions as tend to dissolve the constitution and subvert the fundamentals of government, they are cases which the law will not out of decency suppose; being incapable of distrusting those whom it has invested with any part of the supreme power, since each distrust would render the exercise of that power precarious and impracticable. The supposition of law therefore is, that neither the king, nor either house of

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To legitimate even the act which deprived James II. of the throne of England, the legisla-

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parliament, collectively taken, is capable of doing any wrong; since in such cases the law feels itself incapable of furnishing an adequate remedy. For which reason all oppressions which may happen to spring from any branch of the sovereign power, must necessarily be out of the reach of any STATED RULE, or EXPRESS LEGAL provision, but if ever they unfortunately happen, the prudence of the times must provide new remedies upon new emergencies. Indeed it is found by experience, that whenever the unconstitutional oppressions, even of the sovereign power, advance with gigantic strides, and threaten desolation to a state, mankind will not be reasoned out of the feelings of humanity, nor will they sacrifice their liberty by a scrupulous adherence to those political maxims which were originally established to preserve it. In circumstances therefore which a fertile imagination may furnish, since both laws and history are silent, it becomes us to be silent too, leaving to future generations, whenever necessity, and the safety of the whole shall require it, the exertion of those inherent (though latent) powers of society, which no climate, no time, no constitution, no contract, can ever destroy or diminish. I do not now speak of those EXTRAORDINARY recourses to first principles which are necessary when the contracts of society are in danger of dissolution, and the law proves too weak a defence against the violence of fraud or oppression. And yet the want of attending to this obvious distinction has occasioned

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tive fiction was resorted to, that by his quitting the kingdom he had abdicated the government,

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these doctrines of absolute power in the prince, and of rational resistance by the people, to be much misunderstood and perverted by the advocates for slavery on one hand, and the demagogues of faction on the other. The former observing the absolute sovereignty and transcendent dominion of the crown laid down (as it certainly is) most strongly and emphatically in our law books, as well as our homilies, have denied that any case can be excepted from so general and positive a rule; forgetting how impossible it is in any practical system of laws to point out beforehand those eccentrical remedies, which the sudden emergence of national distress may dictate, and which that alone can justify. On the other hand, over-zealous republicans, feeling the absurdity of unlimited passive-obedience, have fancifully (or sometimes factiously) gone over to the other extreme; and because resistance is justifiable to the person of the prince when the being of the state is endangered, and the public voice proclaims such resistance necessary, they have therefore allowed to every individual the right of determining this expedience, and of employing private force to resist even private oppression. A doctrine productive of anarchy, and (in consequence) equally fatal to civil liberty and tyranny itself. For civil liberty, rightly understood, consists in protecting the rights of individuals by the united force of society.—Society cannot be maintained, and of course can exert no protection, without obedience to some sovereign power: and

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of which no power could have deprived him, notwithstanding his attempts to overturn the constitution, and the open war he had declared against the liberties of the nation. The independence, therefore, of the executive on the legislative power, a defect peculiar to this constitution, and founded on a prerogative not to be destroyed without destroying the constitution, appears to be the first evil which the legislature should endeavour to remove.

The second defect is the secret and dangerous influence of the prince in the three bodies of the assembly that represent the sovereignty. In mixed governments of this kind, the king has a double influence in the assembly. Considered as one of the three component bodies, it is with the strictest justice and propriety that he has the right of putting a negative on any of its propositions.

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obedience is an empty name, if every individual has a right to decide how far he himself shall obey. Blackstone's Comment. on the Laws of England. book 1. c. 7. 244, 251. vol. 1.

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The constitution of the government requires the consent of its three component parts in their legislative capacity; and if this negative power did not belong to the king, the executive power would be destroyed by the legislative power, which would find no impediment whatever in its way. This influence therefore is both legitimate and necessary. The king, however, in mixed governments, being the sole distributor of all civil and military offices, and the only administrator of the public revenue, has the means of influencing the votes of the assembly which represents the sovereignty, and converting its members into the organs of his pleasure. This secret influence would be undoubtedly dangerous under the government of an ambitious prince; might annihilate the liberties of the people, without any change in the constitution; and oppress the nation, without the hand having trembled which had been so active in its injuries. In every other government, fear is the inseparable companion of oppression. In an absolute monarchy, when the prince is desirous of adding a fresh link to the chains of the people; breaks the compact by which he mounted the throne; and wishes to load

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his subjects with the burthen of intolerable taxes, he has the resentment of his people perpetually before his eyes, feels in imagination his throne shake under him, and sees the danger to which his very existence is exposed. But in a mixed government, the prince, free from any apprehension, may avail himself of the arm of the assembly, and violate, with impunity, the rights of the people. He knows the assembly will always be responsible to the nation, and that the popular indignation will not be directed against his own person. He seems then to have an instrument for his purpose, fewer obstacles in his road, and he may frequently succeed if, with the inclination, he has the necessary talents for the enterprize. It will be sufficient if he destroy not with his own hand the outward form of the constitution; if he respect the rights of the assembly, and if he be satisfied with making use of its influence, he may often carry his wishes into execution without any danger to himself.* If James II.

* When Augustus restored the authority of the Roman senate, his great object was to influence rather than weaken it.

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had applied to his parliament to establish popery, and he had made use of the same instruments to restore it, which his predecessors had employed to proscribe it—if, instead of following the example of James I. his grandfather, or Charles I. his father, he had adopted the crafty policy of Henry VIII. or the prudent caution of Elizabeth—if he had, like them, made parliament the blind executioner, not only of his wishes but caprices—if he had not openly violated the constitution, by issuing unprecedented injunctions, and suspending laws without the authority of parliament, the crown would not, in all probability, have been transferred to the head of the Prince of Orange, nor the nation have rushed

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He was solicitous to hide his omnipotence within the clouds, conceal his irresistible power from his subjects, and to appear rather the minister of the senate, and the executor of its supreme decrees, which were in a great measure dictated by himself. Far from considering the senate as an obstacle in his way, and a check on his authority, he found in it the support of his secret omnipotence, and his principal security. The most terrible despotism is that which puts on the garb of liberty.

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into hostilities against the king. The single reign of Henry VIII. proves incontestibly this truth.

What had he not the audacity to commit under the auspices of parliament? Of how many outrages against the liberties of his people, public security, decency, morality, and religion, was he not guilty? With the very aid of parliament he erected scaffolds, on which the mothers of the heirs to the throne expiated the disgrace of having shared the bed of the most execrable of men. Almost with the hands of the two houses, he collected piles of faggots, on which the best subjects ended their days in the most dreadful torments. Was it not even the parliament that declared "the king's proclamations were to have the force of perpetual laws."*

* Hume in his history of England, observes on the occasion, "the parliament having resigned all their ecclesiastical liberties, proceeded to an entire surrender of their civil, and without any scruple or deliberation, they made by one act a total subversion of the English constitution. They gave to the

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All the brutality of tyranny was adopted, in fact, by the obsequious senators of the day, as the

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king's proclamations the same force as to a statute enacted by parliament; and to render the matter worse, if possible, they framed this law as if it were only declaratory, and were intended to explain the natural extent of the regal authority.—The preamble contains, that the king had formerly set forth several proclamations, which froward persons had wilfully contemned, not considering what a king by his royal power may do; that this licence might encourage offenders not only to disobey the laws of Almighty God, but also to dishonour the king's most royal majesty, *who may full ill bear it;* that sudden emergencies often occur which require speedy remedies, and cannot await the slow assembling of parliament, and that though the king was empowered, by his authority derived from God, to consult the public good on these occasions, yet the opposition of refractory subjects might push to extremity and violence: For these reasons, the parliament, that they might remove all occasion of doubt, ascertained by a statute this prerogative of the crown, and enabled his majesty, with the advice of his council, to set forth proclamations, enjoining obedience, under whatever pains and penalties he shall think proper: and these proclamations were to have the force of perpetual laws." Hume's Hist. of England. c. 37. vol. 9.

This terrible act is the 31 H. VIII. cap. 8; but it was repealed by the 1 Edw. VI. c. 12.

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principles of jurisprudence, and the strange and numerous felonies in the statutes of this reign, are only to be equalled by those of Nero and Tiberius. That common madness of tyrants, the madness of attempting to reign over the mind as well as the body of man, which has cost humanity so dearly, was even legitimated by the venerable assembly of those times. What difference is to be found between the history of this prince, and that of many monsters, who bathed the throne on which they sat in blood, except that the latter trembled in their iniquitous career, whilst Henry VIII. was perfectly easy and secure under the shade of parliament.*

* Filangieri has laboured with considerable ingenuity to demonstrate the dangerous influence of the prince in parliament, and conceives the king may always avail himself of it for effectuating improper purposes. The limits of a note are too confined to admit of a complete refutation of his opinions. The instance, however, so forcibly urged in support of this reason does not appear to be decisive. During the reign of Henry VIII. the rights of Parliament were neither accurately understood, nor acknowledged. The nation, corrupt in the extreme, had been impoverished by the oppressive exactions

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Independently of other reasons, this part of the English history may convince us that in mixed governments of this nature, the prince may often succeed in his wishes, and even oppress the nation, without any alteration in the form of the constitution, and without any risk to his personal safety, if he have only the address or art to corrupt the assembly which represents the sovereignty. That powerful means are in his reach, has been already shewn; the difficulty remains of preventing the mischief without a breach of the constitution, and this should be the second object of legislation, considered in its relation to the nature of this government.

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of Henry VII. his predecessor, from whom he derived a vast accumulation of wealth, and the moment was propitious for the purchase of sycophants and traitors. Henry VIII. had money to effect his purposes; but with every detestation of his brutality and tyranny, we have some obligations to that undaunted spirit, which in the days of credulity and superstition rent the fetters of papal usurpation. Nearly the whole of this note is Mr. Kendal's. He might have added, that the parliament of our times is very different from that under Henry VIII.

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The last inherent defect in the constitution, is the continued fluctuation of power in the different bodies that divide it; a fluctuation difficult to be prevented, and which ultimately produces the instability of the constitution.

In all governments of the world, the power of creating, abolishing, and changing the fundamental laws of the nation, is the exclusive right of the nation itself. This power is united to the sovereignty, in those governments alone, where the sovereignty is vested in the hands of the people at large. It is only in popular and mixed governments, that the whole nation is the sovereign, and in these two governments the sovereignty may consequently change or alter the constitution at its pleasure. The exercise, indeed, of this authority is very rare, because there is no clash of the different force or interests of the different bodies, amongst which the different shares of power are distributed.

In mixed governments, however, where the different bodies share the authority, each is in

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perpetual anxiety to extend its own portion, and the body which represents the sovereignty, and possesses the power of disposing of the constitution, has always an interest in altering it, either by increasing its own share of power, or diminishing it, to gratify the members who can amply repay it for such a temporary sacrifice. The constitution, therefore, can never be fixed and certain, but must suffer continual alterations, which must affect either the body that occasions them, or its members.

England, which has already supplied so many proofs of the preceding observations, England herself furnishes a multitude likewise in illustration of this truth. The history of this nation, is the history of the revolutions in its constitution, to which the temper and character of the reigning monarch have almost always given a temporary tone. Under a weak prince, from the poverty of his abilities, or the concurrence of embarrassing circumstances, the two houses have frequently usurped a portion of the royal prerogative. To a high-spirited prince they have as often surren-

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dered a part of their own privileges. From hence it may be collected, that the vigour of parliament has, in many instances, originated rather from some transient and accidental circumstances, than a solid and permanent cause. Were, unfortunately, any future descendant of the house of Hanover to possess great talents, without its hereditary virtues, without the benevolence and moderation which so eminently distinguish both the present monarch and every part of his family; were a tempestuous reign, exposed to a foreign war and internal commotions at the same time, to be followed by a reign of peace; and there should be no longer any obligation on the reigning monarch to treat his subjects with mildness, for the purpose of making them contribute more cheerfully to the vast burthens of their taxes; the bands of regal dignity might probably become more flexible, the parliament lose its vigour, and the throne become again omnipotent. What happened under Cromwell, is a proof of the possibility of the supposition. The sovereignty acquired, at that period, an instantaneous ascendency, and the nation stooped to the authority of

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an absolute usurper, with the mere shadow of the crown for his support.*

The instability of the constitution is then the third inherent vice in this species of government, which the legislature should endeavour to correct. Having explained the principles of these several defects, it will be proper to suggest the means to be employed in their removal.

The independence of the executive power on the enacting power, is the first inherent defect, but this independence forms the very essence of the constitution. Legislation, therefore, has no

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* " Nessuno stato si può ordinare," Machiavel has observed, " che sia stabile, se non è o vero principato o vera republica: perché tutti i governi posti intra questi due sono defettivi. La ragióne è chiarissima, perchè il principato ha solo una via alla sua resoluzione, la quale è scendere verso la republica e così la republica ha solo una via da risolversi, la quale è salire verso il principato. Li stati di mezzo hanno due vie, potendo salire verso il principato, e scendere verso la republica, donde nasce loro instabilità." See Machiavel Discorso sopra il reformare lo Stato di Firenze fatto ad istanza di Leone X.

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right whatever to destroy it. It has nevertheless the means of modifying it, and that may be done by distinguishing the executive from the judicial power.

In a mixed government, well organized, it is essential to the constitution that the king should possess the whole executive power of the laws, though it does not follow as a necessary consequence, that he should personally exercise that power in its full extent. Whether he exercises it himself, or by another in his name, the nature of the constitution will be always the same. Every thing done by one person to another, in his own name, or by his authority, supposes it done by himself.

These data being subscribed to, there will not be any inconsistency in the king having fixed and permanent tribunals, which without any separate personal powers may exercise the judicial power as an emanation of the royal authority. As the existence of these tribunals is not destructive of the nature of this government, there could be no

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impropriety in the prince being obliged to make use of them in his judicial capacity. He would not, though obliged to make use of them, lose any part of his prerogative, for in the exercise of that power, they would be always considered as the organs of his will. When the judicial power is separated in this manner from the executive, which is a separation in reality, though not in right, the king, notwithstanding the inviolability and the independence secured to him by the constitution, will neither be able to elude the laws, nor injure by any arbitrary means, the lives, the fortunes, or the honour of his subjects. Inviolable, independent, and out of the reach of any jurisdiction, as he is himself, the persons who represent him in these tribunals do not stand on the same ground. The decisions of one court may be examined and repealed in a superior court, and when an individual has been oppressed by a magistrate, he may accuse him before a competent jurisdiction, and procure his punishment. There is not any of these measures adverse to the constitution of the government, and the independence of the king will not be de-

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stroyed by them, but modified in favour of the public security.

The English legislature has itself foreseen the necessity of this remedy, and has adopted it. In times, when its constitution was much more imperfect than it is at present, the king sometimes exerted his prerogative of deciding in person the complaints and suits of the subject, and from the casual use of this right, the fatal consequences which might be derived from it, were at once perceived. It was determined, therefore, that the judicial power should in future be always exercised in the king's name by his tribunals, and that they should be the immediate depositories of the laws.*

Even the king's right of discharging the members of these tribunals whenever he thought proper, was in later times abridged. The intention of the laws, in confiding the dispensation of

* Hawkins's Pleas of the Crown 2.

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justice to the magistrates, was to alarm injustice, and prevent oppression in the execution of the laws. Other steps were afterwards taken to secure an exact and uniform obedience to them. The judges held their appointments only "durante bene placito," during the will and pleasure of the king; but the stat. 13 William III. extended them to the "quam diu se bene gesserint," and made them void only on impropriety of conduct and misbehaviour.*

* The judges by the statute 1 George III. are continued in their offices "quam diu se bene gesserint," notwithstanding any demise of the crown, which was formerly (Lord Raymond, 747) supposed to vacate their seats, his majesty having been pleased to declare, "that he looked upon the independence and uprightness of the judges, as essential to the impartial distribution of justice; as one of the best securities of the rights and liberties of his subjects; and as most conducive to the honour of the crown."—Blackstone's Commentaries on the Laws of England. book 1. c. 7. vol. 1. 268. This establishment, with the suppression of the star-chamber, has secured in a great measure, the vigour and authority of the laws in England. The star-chamber differed with the other tribunals. The latter allowed of nothing being law except the common law, founded on immemorial usage and acts of parliament, whilst the former

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In this manner the first inherent defect inseparable from the constitution of this government may be removed, and the English legislature has admirably provided for it. Has it been equally sagacious and active in a provision for the two other defects which it has to combat? What remedy has it opposed to the secret influence of the prince in parliament? It has taken, it must be acknowledged, some measures to prevent in the election of the members of the house of commons a choice of persons openly devoted to the prince. It has declared persons holding employments, dependent on the sole will and pleasure of the prince, to be incapable of being chosen. All the pensioners of the king are in fact excluded,* but perhaps this of itself is a matter of

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acknowledged the proclamations of the king's council, and grounded its decisions on them. Till this exotic weed was rooted out of the British constitution, the protection of the laws was not sufficient to secure the innocence of the subject.

* The supposed influence of government in the house of commons hath been attempted to be restrained by the several

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no great moment. When members are once elected, new hopes and expectations open to them, and they may flatter themselves with the idea of succeeding to appointments which they never thought of in their private and original situation. Are not hopes and ambition more powerful stimulants than gratitude?

Let us suppose, however, in theory, what may not have been always true in practice, that these resolutions have secured the impartiality of the whole house of commons, what barrier has the English legislation thrown up against the influence

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statutes of 5 W. and M. c. 7. s. 25, 26.—2 and 13 Wm. III. c. 10.—6 Anne. c. 7. s. 25, 26.—1 G. I. c. 56.—7 G. II. c. 56.—15 G. II. c. 22.—and the 22 G. III. c. 45. In many of these cases, however, the seat is only vacated, a new writ issues, and the person who has accepted a place or office may be again elected. Yet these different restrictions seem only to be what the people have a constitutional right to expect, since amongst other clauses of "Nolumus" formerly inserted in the writ of summons (Whitelocke's Memor. 432) there was the "*Nolumus autem quod aliquis de Retinentia domini nostri regis aliquiter sit electus.*"

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of the prince in the house of peers, which by the perpetuity of its members, and their rank, has always the greatest weight in the national deliberations. Instead of weakening this dangerous influence, is it not encouraged? It has given the prince the right of creating any number of peers which he pleases, and a new created peer from principles of respect and gratitude, may generally be supposed to be devoted to the prince, from whom he received his title and his honours. The bishops, or spiritual peers, are likewise created by the prince, and if the twenty-six are almost uniformly ranged in a firm phalanx to support his interest, it should be recollected that they have the same powerful incentives. There is not, indeed, a sovereign in Europe with so many employments in his gift, or so many lucrative offices to distribute, as the King of England, and the legislation, far from the idea of restraining his munificence, has rendered it inexhaustible. From the king honours, titles, and employments, may be hoped for; from parliament it is impossible to expect them—they are not in its gift.

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Leaving the English legislation, therefore, which does not seem to have provided any adequate mode of guarding against this defect in its constitution, one may perhaps be suggested, which has at least simplicity to recommend it, and appears to be attended with little difficulty in its operation. The king, in a government of this nature, has an undoubted and indisputable right to all the civil and military offices. It is a right derived from the constitution itself, which has given him the whole executive power, and the management of every thing dependent on civil right and the right of nations. With what little consequence any diminution of this part of the royal prerogative would be attended, Poland and Sweden are glaring and decisive instances. No thought, then, should be ever entertained of diminishing a right which the constitution of the government has inseparably united to the crown. Legislation, as has been repeatedly observed, neither ought to destroy, nor can destroy the constitution. Its sole province is to rectify its errors.

Allowing, therefore, what should never be

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disputed, the king to have the liberty of disposing of all the employments dependent on the double executive power confided to him, the means should be searched for of balancing the influence which arises from this right, by throwing others into the scale of the assembly which represents the sovereignty. Let it enjoy that species of munificence which is proper for it. As sovereign, let it have the sole power of disposing of the members of the sovereignty. What is more extraordinary, in a political sense, than the right given to the King of England of creating both the temporal and spiritual peers? They are all members of the sovereignty, and the king not being possessed of the whole sovereignty* by the nature of this government, can he, without a political absurdity, communicate to others what he does not wholly possess himself? Is not this a pernicious sacrifice of the legislative power in favour of the executive? Are not the principles of

* Or legislative authority. My ideas on the construction of the "Sovrano" have been given in a preceding note on a similar expression in this chapter.

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a free constitution apparently lost for ever when the most respectable part of the legislature is created by the executive.*

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* If the state of popular representation in England were rendered consistent with the avowed principle of the constitution, this theoretical absurdity would be found a practical excellence. Filangieri himself admits the executive power ought not to be fettered with severity, and the regal privilege of creating peers would preserve the energy of the executive office, and annex a proper respect and dignity to its exertions. So far from being dangerous to the constitution, the expedient seems well calculated to maintain its equilibrium and stability. In remote ages the king had occasion for the co-operation of the cities and boroughs and their representatives, to assist him in his resistance of the usurpations of the barons; but at present, from a change of circumstances, the proportion of landed and pecuniary property is considerably in favour of the commoners, and they have consequently a proportionable degree of power. If, therefore, the mode of election were to be reformed on constitutional principles, and the influence of the peers, exercised in the elections of the members of the lower house, totally destroyed, the people at large, and national property, really and not nominally represented, the augmentation in the electors and representatives would give such a weight to the popular influence as must ever protect the nation from the dangers that might otherwise arise from any undue exertion of

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If, instead of being contrary to the nature of this constitution, it is consistent with it, that the assembly, which represents the sovereignty, should have the right of conferring the honour of a seat in it on distinguished merit, let it exclusively enjoy this illustrious privilege.* Let it have the power of admitting into its bosom the individual

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the regal prerogative in the creation of peers. I am indebted for the substance of this note to Mr. Kendal's observation on this passage.

* This appears to be an extravagant, unconstitutional and dangerous proposition. The king by the law of England is the fountain of honour, and to deprive him of this privilege would be an infringement of the constitution. The popular influence might acquire by such means a fatal preponderance, and feeling its energy, other inroads might be made on the power of the crown, till by repeated encroachments the king's prerogative were reduced so much as to exist merely in name, and the balance of the constitution effectually destroyed. The two houses possess the power of recommending, by an address to the crown, any individual whose services entitle him to rewards and honours, and it produces the effect without the danger. It has also the power of expelling its members, and of parliamentary impeachment.

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who has rendered immortal services to his country. Let patents of nobility, instead of being emanations from the prince, be testimonials of national gratitude, and evidences of honour and virtue. Let it have the sole disposal of all distinctions founded on public opinion, and, amongst other privileges, let it have the right of expelling its suspected members, and let the expulsion exclude them from their country's service, and any office under the prince. Let the number of the members be limited by the laws as much as possible. Let the two houses in the exercise of parliamentary munificence, or punishment of their own members, be uncontrouled and independent, even of the prince's negative. In the last place, let the legislation not content itself with preventing the corruption of the members of this august assembly, but extend its care to prevent also the corruptions of the electors. Let it, with the joint assistance of education, rewards, and honours, endeavour to establish morality, and awaken in them the love of glory, which is always united with real patriotism.

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When the infamous traffic in the sale of the votes of the lower classes of the people shall be effectually suppressed; when abilities and integrity regularly influence their choice; and the laws exclude indigence, which is always suspected of venality, from the right of electing; virtue, supported in the public assemblies by hope, fear, and morality, will rally the majority on the side of the public interest. The nation will be truly free, and the possibility of an united assembly of spirited and independent patriots will be demonstrated.

With these, and similar means of counteracting the secret influence of the prince in this government, on the deliberations of the assembly which represents the sovereignty and the nation; the legislation should turn its eyes towards the last inherent defect in the government, the instability of the constitution.

It has been laid down as a maxim, that to deprive the assembly of the right of altering or changing the fundamental laws, which deter-

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mine the form of the constitution, would be to destroy the constitution itself. It should be rendered therefore very difficult. The object might possibly be obtained by a determination that to change, alter, or introduce any fundamental law, a majority should not be sufficient, but that the proposition should pass unanimously. This strong remedy would not deprive the assembly of its right, which it can never lose, though it might protect the constitution against the continual vicissitudes which endanger its stability and safety.

It would be a work of difficulty indeed to procure a perfect unanimity in the assembly, and it could only be expected in the single case, where the advantages from it appear so decided as to be universally desired, and so striking as to be universally perceived. The constitution in such a case would rather be perfected than altered. It is, indeed, the only instance in which the "liberum veto" is useful even to a republic.

Such are the remedies which a wise legislation might introduce to correct the inherent vices of

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this species of constitution, and such are the principles flowing from the relation of laws to the nature of this government.* They have been developed with some degree of regret, as the discussion has led to a few slight censures on a nation which above all others is entitled to admiration.

Philosophers of Europe! Respectable Englishmen! Forgive the liberty taken by one who loves and venerates you, in treating with warmth of your constitution. In probing your wounds his

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* Nothing has been said of the right of taxation, of new impositions, or the grants of supplies. The nature of the constitution gives the right to the assembly which represents the sovereignty, and it cannot be deprived of it without the destruction of the constitution. Yet this palladium of liberty in mixed governments is of little efficacy whilst the defects that have been pointed out in these governments are suffered to remain. Of what consequence is it that the present Emperor of the French has not himself the power of imposing taxes on the people, if he have the means of effecting it through the medium of his legislative assemblies?

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sole intention is their cure—his wish your liberty! your safety!

After having instructed, enlightened, and astonished Europe with your inventions, your arts, your productions, and your wonderful discoveries, is it possible your legislation should be so obscure? Formed out of many barbarous absurdities of your ancestors; of the extravagance of the Gothic feudal system, in direct opposition to the principles of your adorable liberty; of usages and customs, whose origin is not even known; of new laws often contradicting old ones; of the decisions of your courts with the effect of laws; of useful establishments united with destructive ones; of evils and their remedies; of numerous sacrifices for your independence, and as many instruments of despotism; it offers to the eyes of the philosopher an immense mass of confusion,* out of which

* The system of English jurisprudence is composed of the laws of the Anglo-Saxons and Danes, collected by Edward the Confessor, and augmented by William the Conqueror, which

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it may be difficult to extract a remedy that would remove the defects of your constitution, and preserve your liberty.

Resolve, however, to employ yourselves in this sublime occupation—reform your legislation—improve your constitution—define with accuracy the indisputable rights of the crown and those of your parliament—abolish all your ancient customs incompatible with the present state of things—unite in one system what cannot be expected in a legislation, the work of so many centuries, framed under various circumstances, reformed in many periods of your history, but never perfected—recall to your country that virtue without which it would be vain to look for liberty; morality, with-

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is called the common law—the parliamentary statutes—private charters of cities—the forest laws—military law, which is in force only during the time of war—the Roman law, adopted in the court of admiralty—the canon law in use with the clergy, when it is not contrary to the king's authority, or the law of the realm. The British system of jurisprudence equals therefore that of the rest of Europe in multiplicity, if not confusion.

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out which patriotism is not to be found; education, without which there cannot be morality—reward public spirit—punish public treachery, and public corruption—and by rendering the members of your parliament incorruptible from their interest as well as virtue, substitute a solid and durable liberty, in the room of that destructive and pernicious licentiousness which invariably leads to anarchy and despotism.

In a word, endeavour to accomplish what is not impossible, and what with your talents, joined to your enthusiasm for the public good, may be easily accomplished, endeavour to harmonize, in one code, liberty, peace, and reason.

Nothing will remain to be then added to your glory! Your national triumph will be complete!

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CHAP. XI.

OF THE SECOND OBJECT OF THE RELATION OF LAWS, THE ACTIVE PRINCIPLE IN DIFFERENT GOVERNMENTS.

BEFORE an enquiry is entered into respecting the modes of the relation of laws to the government, and the rules to be derived from it, the principle itself should be determined. Every form of government, Montesquieu observes, has its own predominant principle of action; and fear in a despotic state, honour in a monarchy, and virtue in a republic, are these ruling principles.*— But on what proofs, a celebrated philosopher†

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* De l'Esprit des Loix. lib. 3. c. 3, 4, 5.

† "Mais sur quelle preuve M. de Montesquieu fonde-t-il cette assertion? Est-il bien vrai que la crainte, l'honneur & l'amour de la vertu soient réelement les forces motrices & differentes des divers gouvernements? Ne pourroit on pas, au contraire, assurer qu' une cause unique, mais variée dans ses applications, est également le principe d' activitè de tous les

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asks, has Montesquieu established his system? Are fear, honour and virtue the real springs of action in these different governments, or may it not, on the contrary, be demonstrated that one single cause, uniform in its operations though varying in its applications, is the primary and active cause in all governments. This is the love of power.

The origin of human actions is generally derived from two powerful stimulants—the love of pleasure, and aversion to pain. On this supposition it may be easily discovered that the love of power originates in a love of pleasure. Every individual is desirous of being as happy as it is

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empires; & que si M. de Montesquieu, moins frappé du brillant de sa division, eût plus scrupuleusement discuté cette question, il fût parvenu á des idées plus profondes, plus claires & plus generales: il eût appercu dans l'amour du pouvoir le principe moteur de tous les citoyens: il eût reconnu dans les divers moyens d' acquérir le pouvoir, le principe auquel on doit, en tous les siecles & dans tous les pays, rapporter la conduite différente des hommes!" Helvetius de l'Homme. sec. 4. c. 11.

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possible for him to be, and consequently is desirous of having in his own hands a power that may oblige others to contribute as much as they are able to his happiness. From this principle he wishes to command them. It is a passion therefore that is born with man, it is inseparable from his nature, it expands with social relations, and becomes the common cause of action in all civil bodies, whatever may have been their particular constitution.

This truth is capable of being proved to mathematical demonstration, but the demonstration would be useless. Men who live in the world may see in a single instant its certainty. They have no occasion for external evidence, they have only to consult their inward feelings, and if they have the courage to do so, let them then deny the principle which has been just advanced. Yet an objection may be perhaps made on the impossibility of the power of the same cause of action on governments so widely different from each other.

In every nation, however, the supreme power is either in the hands of a single individual, or in

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those of a certain class of persons, or is distributed in the whole body of people. Notwithstanding this distribution of authority, it is evident though the people under different governments may contract certain peculiar habits and different customs, they may propose to themselves the same object and equally endeavour to please the supreme power, for the purpose of obtaining a share or emanation of its authority. The cause is, therefore, constantly the same, though its effects may differ. The same love of power, which in a free republic renders the individual virtuous and passionately attached to his country, transforms him into a very different being in a despotic state.—At the same identical moment it gives birth to a Curtius, a Decius in Rome, and in Asia to the vilest of slaves. Even in the very same country, but in different times and under different circumstances, it has produced a Cincinnatus and a Sejanus, a Cleander and a Perrenides.

These general ideas being established, it appears that which Montesquieu attributes to his several principles, is no more in fact than the re-

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sult of the love of power itself in different governments. In illustration of his system he adds, that in a despotic state there is no virtue. The force of the argument may be admitted, but on what principles? Because in an arbitrary government, where the sovereign authority is in the hands of a tyrant, whose only education has been confined to the walls of a seraglio, and his knowledge has been solely acquired from the intrigues of a set of cunning and corrupted courtiers, he must unavoidably choose his ministers from his parasites or the accomplices of his crimes. It is not undoubtedly in such a country, or under such a government, that we are to expect the appearance of a Cimon, or Aristides. Their virtues and their talents would not be congenial either with the country or its government, and it would be impossible for them to obtain any share of power which must be delegated by a creature as corrupt as human nature is capable of being. Under such auspices vice, indecency, debauchery, infamy, oppression, injustice, rapine, fraud, and meanness, are approved, authorized, rewarded, honoured by the superior power, and legitimated, if the expres-

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sion may be used, by the tacit consent of the community. The favourite is there superior to the hero—the traitor to his country becomes the most powerful individual—he, who does not oppress, is himself oppressed—virtue is obliged to shrink from the eye of observation and conceal herself—and lastly, courage and honour put on the garb of cowardice and baseness, for courage and honour are nothing where the despot is every thing. A political phenomenon, which sometimes astonishes the world, will more fully explain the fact. Let it be supposed that a prince of virtuous disposition is seated on the throne of a despotic government. In a moment every thing changes its aspect. Every individual endeavours to be useful to the state, and ambition is itself distressed to be worthy, or to appear worthy of the employments to which it is aspiring. The wish to please the transitory hero on the throne, will certainly create many hypocrites in the nation, for virtue will not have sufficient time to take a lasting root, but even this hypocrisy is the glorious and useful homage which vice is obliged to pay to virtue in borrowing her dress. Courage and honour will throw

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aside the disguise under which for their safety they had concealed themselves; and he that had no virtue will endeavour to acquire it, or appear to have done so. In this manner the seat of despotism has been sometimes ornamented; and in this manner Trajan and the two Antonines produced a moral revolution within the walls of Rome.

The love of power is, then, the real cause which operates on the individual, and this very passion makes him virtuous in free and popular governments.

Where the people reign, the whole nation is the despot. Its desire must be the good of the majority.—The people here have no other means of obtaining a share of power, but as a reward for their services to their country. A love of power consequently in these kinds of government animates the people with a love both of justice and of their country. For many centuries it produced in Rome prodigies of valour with prodigies of virtue. Every citizen was a Fabricius, a

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Regulus, a Cincinnatus, but unfortunately these bright days were neither long nor lasting. Rome had to boast of them, whilst valour and virtue were meritoriously rewarded by the consulship and the office of dictator, but, when tyranny usurped the place of liberty, the prætorian bands and legions decided the choice of an emperor, and the capitol was the infamous market for public employments, and public punishments, these prodigies instantly disappeared. Virtue had no longer the least encouragement; heroes were degraded into informers, the senate converted into an instrument of the hatred and suspicion of a tyrant; and, in a word, there was no longer a country in the universe, which had, above every other country, a claim to the love and affection of its inhabitants.*

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* There is a disgraceful record of the Roman degeneracy and vice in the history of the barbarous nations that overthrew the Roman empire. When we are desirous, Luitprand remarks, of insulting an enemy, we call him a Roman. "Hoc solo, id est quidquid luxuriæ, quidquid mendacii, immo quidquid vitiorum est comprehendens." Luitprand Murat Scrip. Ital. vol. 2. par 1. p. A. VI.

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In every government, the people, then, will be generally what the love of power makes them ;* and the laws should endeavour to direct this passion in such a manner as to render it useful. Its mode of application or direction should however vary, for its effects are different under the different forms of government in which it operates, and for this reason its application should be also different.

In a democracy the laws ought to leave the

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* In those governments where the love of power tempts men to be vicious, there may be undoubtedly some splendid characters, who prefer the sublime transports of conscious integrity and innocence to the ambitious views of acquiring power and dominion by vice. Whilst Cataline and his accomplices were attempting the destruction of the Roman citizens, who dared to acknowledge a love for their country, Titus Labienus was a signal instance of resolution and virtue. When Cæsar laid the foundations of the most arbitrary tyranny, Cato opposed his measures, fled to Utica, and died a Roman death. These and similar exceptions cannot however invalidate a general rule, because an hundred uncorrupted individuals would form no sort of comparison with nearly a whole people totally depraved.

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people the election of their magistrates and ministers, which is the best means of rendering the love of power an unfailing source of great merit and great virtue. An entire nation seldom errs or is corrupted, whilst a senate is exposed to both dangers. The connexion or influence which an individual may have with the members of a senate are infinitely more likely to be stronger than with the whole body of a nation, and though he may have hopes from the senate, he cannot expect any thing without real merit from the people. Rome and Athens offer many proofs of this position.—In the former, after the people had with such tumult and importunity obtained the right of bestowing the public offices on the plebeians, they never once elected any of them;* and, in the

* Four tribunes were created, with consular authority, to satisfy the people, who clamorously insisted on an admission to the office of consul; but notwithstanding these four tribunes might have been chosen either from the plebeians or patricians, the people when they elected them took the whole out of the patricians. Livy has paid a high compliment to their judgment. "Quorum comitiorum eventus docuit alios animos

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latter, though by a law of Aristides the magistrates were eligible out of every class, the commonalty, as we learn from Xenophon,* never asked for an employment in which their personal

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in contentione libertatis, & honoris, alios secundum deposita certamina in incorrupto judicio esse." And he adds afterwards, " Hanc modestiam æquitatemque & altitudinem animi ubi nunc in uno inveneris quæ tunc populi universi fuit?"

The expedient adopted by Pacuvius Calavius to appease a sedition, which was expected to break out instantly at Capua, is well known. Machiavel has minutely described this event, and drawn from it an important political truth. " Credo ancora che si possa conchiudere che mai un uomo prudente non debbe fuggire il giudizio popolare nelle cose particolari circa le distribuzioni de' gradi e delle dignità, perche solo in questo il popolo non s' inganna, e se s' inganna qualche volta, sia sì raro che s' inganneranno piu volti i pochi uomini che avessero a fare simili distribuzioni. Machiavelli Discorsi Sopra la Prima Deca di T. Livio. lib. I. c. 47.

* Τουτων μεν των αρχων ουδεν δειται ὁ δημος μετειναι, ουτε τῶν στρατηγικῶν κληρων οιονται σφισι χρηναι μετειναι, ουτε των ἱππαρχιων· γινωσκει γαρ ὁ δημος, οτι πλειω ωφελεῖται ει τῳ μη αυτος αρχειν ταυτας αρχας, αλλ' εἀν τους δυνατωτατους αρχειν. Xenophon. de Athen. Republica 691, 692. Francf. folio. 1596.

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safety or glory was interested. There is another advantage in a popular election—the people do not examine into secret virtues or latent talents, and if they did, they might be deceived in their researches. On the contrary, the public, in the words of Montesquieu, " n'a à se determiner, que par des choses qu' il ne peut ignorer, et des faits qui tombent sous les sens. Il sait tres bien qu' un homme a été souvent en la guerre, qu' il y a eu tels ou tels succès; il est donc très capable d' elire un general. Il sait qu' un juge est assidu, que beaucoup de gens se retirent de son tribunal contens de lui, qu' on ne l' a pas convaincu de corruption; en voila assez pour qu' il elise un préteur. Il a été frappé de la magnificence ou des richesses d' un citoyen, cela suffit pour qu' il puisse choisir un édile."* Every citizen from these circumstances becomes persuaded, that for the attainment of a portion of power the good opinion of the people must be first acquired by public services, or the display of splendid and

* De l'Esprit des Loix. liv. 2. c. 2.

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useful talents and virtuous actions. By these powerful stimulants heroes are formed. By these means the celebrated and virtuous Penn, a philosopher, who, from his simplicity of manners, was worthy of the times when men were poorer but more illustrious; a legislator, that in the days of Solon or Lycurgus would have obscured their glory; Penn, who left his country to carry the first example of benevolence and humanity into a new hemisphere, rendered Pennsylvania a nation of heroes, the asylum of liberty, and the admiration of the universe. He was aware that the great object of legislation is the union of private and public interests; and that the only means of succeeding in the attempt in free governments, is to vest in the people the distribution of public employments. His speculations were reduced into practice, and by an attention to this political axiom he obtained the end which he had in view, and laid the first and firm foundation of a republic which challenges the regard of the whole world. The annals of philosophy will immortalize his name, and the memory of a man will be "had in everlasting remembrance," who was the author of

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happiness to America, at the very time when all the rest of Europe appeared in a conspiracy for its misery and ruin.

It follows from the preceding series of argument, that the first law which protects, directs, and renders useful the love of power in free and popular governments, should leave to the people the choice of the person to whom any portion of authority is to be confided. The second, is that which extends to every individual the right of being able to acquire the first office and employment in the state, except he is ineligible by a legal disability, clearly specified by the laws, from his misconduct or his crimes. The necessity of such a law is evident, for it is no other than the result of the principles which have been advanced.—Admitting that every individual serves his country from the rewards it offers him; that the love of power is the first object of his hopes; and that the different degrees of authority conferred on him are the equivalent for his services; it must be acknowledged, that when a part of the people is either wholly or partially excluded from these

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rights, the republic will be divided into two classes, one of which has not the smallest interest in the public welfare, and the other every inducement to serve it.

A single comment is not necessary to point out how contradictory this civil partiality is to the principle of the government, how it affects its equilibrium, and destroys equality; not that metaphysical equality which is the foolish politician's dream, but that equality which is the soul of popular government, whose object is not power but right, and the loss of which changes great men into slaves, and produced Helots in the midst of Sparta. The law therefore which gives to all the people in a democracy an equal right to offices and employments, is one of the most necessary laws to protect, encourage and direct the principles of government.

The last law intended to produce the same effect, is that which endeavours to prevent the abuse of power. As this abuse of power is always united with power, and every where perni-

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cious, and is particularly fatal to free and popular governments, the laws ought to prevent it as much as possible.

This was the object of ostracism at Athens, and the law which authorized it drew a double advantage from the sentence. It laid a restriction on the abuse of power, by the exile of the citizens whose authority was suspected to be dangerous to the state, and it protected at the same time the principle of government. Power was not itself so much courted, as the reputation of possessing it, and every citizen believed he had acquired this distinguishing celebrity, when his reputation or his merits occasioned his exile. Ostracism became therefore a species of honour in the Athenian government, and it demonstrates how a wise legislation, by a proper management of the human passions, may change almost human nature, or at least afford the human mind in certain situations an equivalent for the loss of parents, friends and country.

Yet without having recourse to ostracism, which

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carries with it on the first consideration the appearance of a violent measure, the laws may restrain the love of power by the aid of the love of power itself.

Let them open the way to the first offices and employments in the state; let them fix their duration; establish a certain gradation and regular ascent in them; let the first appointment be a probationary one, and a trial of the merit and qualifications necessary for the succeeding one; let there be an interval between the appointment to one office and the succession to a future one, in which every citizen may accuse the late magistrate, and a court open to receive the allegation, judge of the propriety, and report its opinion to the public; and without the assistance of ostracism the love of power will correct its own abuses.

These are the laws which protect and direct the love of power in popular governments, and those which are calculated to arrive at the same end in aristocratical governments are next to be consi-

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dered. An aristocracy bears the same relation to the nobles or patricians as a democracy to the people. The choice, therefore, of the citizens, to whom any share of power is confided, ought to be made by the whole body of the nobles, for the same reason that in a democracy it should be vested in the whole body of the people. Merit will then have a greater influence in the distribution of employments, and the love of power will be useful, because it will include the obligation of being both just and serviceable to the state.

Since the whole power in this government is notwithstanding in the nobles, and the people are political cyphers, what inducement is there for the people to co-operate with the nobles for the public interest? To what end can the love of power be directed except the destruction of the aristocracy itself, and the annihilation of that odious and humiliating distinction between the rights of one citizen and another, the rights of the nobles and the people?

This evil, which may render an aristocracy the

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worst of all governments and the most subject to civil discord, may be counteracted by the laws. Without any violence to the nature of the government, the people may be pleased and interested in the public good by two methods; by leaving them the access to a few of the inferior offices, and by giving every citizen the right of admission into the class of nobles, whenever he should unite the merit and qualifications recognized and directed by the laws. A resolution of this import would be attended with particular advantages.—It would encourage the precise principle of the government in the people, who, without these hopes, might have no interest whatever in the public welfare, and it would operate as a barrier against the violence or intemperance of the people, because the most powerful and respectable individuals amongst them, seeing themselves near their admission into the body of the nobles, would feel their own interest intimately connected with the defence of the rights of the nobles. On this very principle the Roman patricians sometimes found their firmest friends and ablest advocates amongst the tribunes of the people.

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The proper means which the laws should make use of to protect the love of power in monarchies is lastly to be considered.

In those governments every portion of delegated authority is only an emanation of the supreme power deposited in the hands of the monarch. The sovereign has the entire gift of all public offices and employments, and distributes the different shares of authority, which are entrusted to any of his subjects. The individual inflamed with the love of power here proposes to himself no other object but to please the prince, for the purpose of acquiring a share of authority, as a recompence for his services. The pursuit of this object may fill the state with great men under the government of a virtuous sovereign, but it may likewise fill it with parasites and slaves under a weak and corrupt monarch. It is the province of the laws to prevent this mischief, and to give the love of power in a monarchy a more useful and a more secure direction. To deprive the sovereign of the distribution of the public offices and employments, would be to injure his

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rights and violate the constitution. To lay his nomination under the restraint of the public approbation is an impracticable remedy, and would be highly disgraceful to the sovereignty. The sole expedient, that would be useful to the state without being destructive to the rights of the sovereign, appears to be comprised in an allotment of some specific employments for persons who render their country particular services, regulated by the laws, and a determination of the merit and qualifications indispensible for the other public offices, which are not included in this allotment. A similar regulation has formed for ages the prosperity of a nation, where every virtue is honoured with some reward, and every useful talent is exerted; where nobility is not only an hereditary distinction but a personal recompence; where talents and merit are invariably preferred to mere family descent; where neither the will of the prince, the favourite of a minister, cabal, nor intrigue, but the laws, distribute the public offices and employments, stimulate the emulation of every citizen, and bestow public honours and recompences on the individual, independent of his

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rank, as rewards for useful and virtuous actions. By these means the order of a private family is preserved in the vast empire of China, and the laws animate and influence the love of power, the sole and universal principle of all governments.

The moral writers in this immense empire, as in all others, where pure morality and unadulterated philosophy are established, never condemn the ambition of governing, except when united with a wish for oppression. There would, however, be a want of candour, if the love of power were not acknowledged to have different aspects, and put on different appearances. It is a virtue in the superior soul, which exercises it for the happiness of as many as are within the circle of its influence. It is a vice when it is only visible in injury, injustice and oppression.

The ambitious man under a free government is a virtuous citizen, who wishes for a public office or employment as the lawful means of procuring his own felicity, and contributing to that of others. Under a tyrant he is the cunning slave, who

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struggles to escape from oppression to be himself an oppressor.

In a mild and moderate government, where a wise legislation has turned this passion into its proper channel, he is the sublime being, who desires authority to support the laws, defend his country, maintain its rights, protect its liberty, and acquire by these means the esteem and gratitude of his fellow citizens.

In a despotic government, he is a monster, raging with the lust of power, to violate with impunity every principle of law and justice, to trample on the unfortunate, oppress his country, and increase the weight of the chains with which it is already fastened to the earth.

Yet an attempt to eradicate ambition, and wholly destroy the love of power, might be an error in morality. The government and the laws are themselves deficient, and should rather direct its course and regulate its motions. Without this vivifying principle, society would lose its energy,

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and the political body might perish from the want of exertion, and from languor. It is an active spirit, which ill-directed may occasion the public ruin, but under the controul of wise and wholesome laws, it infuses fresh vigour into the state, and rapidly accelerates its advances towards perfection.

CHAP. XII.

OF THE THIRD OBJECT OF THE RELATION OF THE LAWS, THE GENIUS AND DISPOSITION OF PEOPLE.

THE genius and disposition of mankind may be considered in two points of view; in their relation to that universal spirit which in every age has animated the greatest part of nations, and that distinct and peculiar character which has distinguished particular people for whom certain laws have been established. Whether the object be considered in one or the other point of view, it must necessarily have a considerable degree of influence on the legislative system.

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The instability, which attends every thing connected with mortality, is also visible in the prevailing character of nations at different periods. The spirit of the age changes with a change of the circumstances which concur in its formation; and time, which produces such revolutions in the physical world, has the same influence on morality and the political history of man. Is legislation to neglect their consequences?

For a proof of the reality of these changes it will be sufficient to cast our eyes on the history of nations and of ages. What traits of resemblance exist between our ancestors and their descendants; and what similitude is to be discerned between the genius and disposition of past times and those of our days? Where is their enthusiasm for war and conquest? Where is that military rage which inflamed every heart, which armed all nations, and, by a revolution in nature itself, rendered life less dear, and death less terrible? Where are those ancient prodigies of valour and of virtue? Where are those spectacles in which Greece and Rome made a pompous

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display of their dexterity and force before immense crowds of people; when with the support of rewards and public acclamations they nourished the living sentiments of glory, and pleasure itself paid its tribute to strength and courage? In our days mere strength and courage are of little consequence. Men fight at a distance, without coming into contact with each other, and whole ranks are mown down without the knowledge of the hand from which they received their wounds. An inflammable and elastic preparation has brought the strong to a level with the weak, and by its means the hero and the coward meet almost on the same terms. The object of war is also changed. In ancient times nations armed to destroy or lay the foundations of a kingdom, and to vindicate the natural rights of man. Hostilities were never entered into for the capture of a post or possession of a mine, the exclusive sale of a commodity, or the caprice of a monarch and his minister. Contests also in our days are generally carried on at a distance; frequently on the ocean; and by these means nations are seldom witnesses to the dreadful scenes of the misery and

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destruction to which the immediate sufferers are exposed. Expeditions on land are also less numerous and less rapid. Our ancestors, without standing armies or subsidiary troops, were in a perpetual state of hostility; whilst in the midst of profound peace above a million of men are in the constant pay of the modern nations. Yet a spirit of trade and commerce occupies the whole world: peace and riches are its first and general wish.—Such a prodigious revolution in the interests, the disposition, and the genius of nations, must naturally produce a corresponding diversity of principles in the legislative system. What would be the condition in the present times of a republic, whose laws, like those of Sparta, were to proscribe gold and silver; prohibit navigation; degrade agriculture and manufactures, and attach a certain degree of infamy to commerce, which, though formerly supposed to contribute to the ruin of states, is now the principal and the soul of their existence. Under such laws, in what situation should we find Holland and Great Britain? Amsterdam and Rotterdam would be literally what Algiers and Tunis are; what the

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Danes and ancient inhabitants of Norway were; and what the greatest part of the barbarous people continue to be, who inhabit the shores of the ocean. They would be two piratical republics, condemned to live by fraud and plunder; they would be poor, because piracy has never enriched a nation; and they would be precarious, because they would always be exposed to the just vengeance of the nations whose vessels they had overpowered. An opposite system of legislation has, however, been adopted, which has extended the treasures of nature and art to all countries.—The superfluities of one kingdom have been transported to others in want of them; the sea is become the basis of empire; and riches are accumulated by the unanimous consent of the people, whose happiness has even increased in the multiplication of their wants.

Let us recollect what was the opinion of the ancient legislators, and compare them with those of the modern statesmen. Plato was not solicitous for perfection in the arts, and wished those only to be introduced into his republic which

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were absolutely necessary for the wants of life.—He refused to supply either the Arcadians or Cyreneans* with a code of laws, because these people were both rich and in love with riches; and Phocion, who foresaw the ruin of Athens in its opulence, was desirous of considering the artists as slaves, and consequently of depriving them of the rights of citizens.

All the political treatises and histories of antiquity attribute indeed the decline of nations to the introduction of wealth; and the laws of Lycurgus, which prevented its admission into the walls of Sparta for many centuries, were considered as consummate specimens of political wisdom, and the models of a perfect legislation.—Persuaded that opulence is the parent of vice,

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* "Egli rifiuta di dare leggi agli Arcadi, ed a' Coronesi." I have substituted the Cyreneans on the authority of Plutarch's "πλατωνικῆς τινος φωνης αναμνησας την πολιν, ἣν εκεινος απεθεσπισε προς αυτους· δεομενων γαρ, ως εοικεν, ὅπως τους νομους γραψῃ, και τον δημον αυτον εις τυπον τινα καταστηση πολιτειας σωφρονος, εφη, καλεπον ειναι, Κυρηναιοις ἐτως ευτυχῶσι νομοθετειν." Vita. Luculli. sec. 2.

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and a ready instrument of corruption and slavery in the hands of despotism, their authors feelingly lament that Solon should have been constrained to abandon his own principles in the laws for the Athenians, and they assure us he was himself sensible of the defects of his own system, from his ingenuous confession, that "he had not given them the best code of laws, but the best which their situation would admit of."*

Thus the ancients thought, and such was the political system of Greece and Rome. Their grand object was the maintenance of frugality by poverty; of courage, strength, patience under fatigue, and severity of manners by frugality.—Let us turn from this ancient picture to our own times. Far from the idea that poverty is a benefit, the politicians of our days are engaged in an unwearied pursuit after riches. Their whole intention and their speculations are directed to

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* Ερωτηθεις ει τοις αριστοις Αθηναιοις νομοις εγραψεν "Ων αν, εφη, προσεδεξαντο τοις αριστοις." Plutarchi. Vit. Solon. 16.

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promote the encouragement of agriculture, and the progress of the arts and commerce. To the people they say " get riches, if you wish for happiness." To the sovereign, " procure for your subjects superfluities of every kind, if you have any inclination to be feared or respected amongst foreign nations and peaceable within your own dominions. Indigence in your people will shake your throne, and expose your territories to the insults and pillage of the neighbouring powers. If your people are opulent, your government will be feared and respected; your alliance courted; and you will give the laws to those very powers who would have forced them on you, if you had not exceeded them in wealth."

From what cause are we to deduce this diversity, or, to adopt a more correct expression, this contradiction in the ancient and modern code of politics? Are we to suppose an error in one of the two schools, or are we not rather to admire the address with which they have both adapted them to the genius and prevailing spirit of the age. Does not the history of antiquity exhibit to

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us rich nations receiving laws from poorer ones, and do not the modern annals of Europe exhibit the reverse? In the present state of things could any possible danger be apprehended from a republic with the same principles, the same resources, and the same institutions as those of ancient Rome? The nature of things has changed. It is no longer the strong that give laws to the weak: the rich rule over the poor. The days are past when two legions marched to attack a whole people. Vast bodies of troops are led into the field, and these vast bodies of troops cannot be supported without vast funds for their subsistence. More than two hundred thousand men, armed to destroy or be destroyed, with fifty millions of specie, were the formidable documents on which the house of Austria founded its late pretensions to a few acres in Bavaria. Riches are become, therefore, the sinews of war, and gold and silver are the obstacles or the means of conquest.

If the spirit and prevailing character of the age consist in a love of opulence, and the superiority

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of nations rest no longer on the side of strength, courage, or military heroism; if also the richest people are the most feared, the happiest, and most respectable; it follows that the legislator ought to turn his whole attention to agriculture, the arts and commerce, and the acquisition and preservation of wealth, in preference to any wish of forming intrepid minds in robust and active bodies. The influence which the genius and the predominant spirit of the age have on the legislation, and the principles to be deduced from them, having been examined in the first point of view; in the second, the influence which is derived from the distinct and particular character of nations on the laws, remains to be considered.

Many causes at present undoubtedly concur to efface the difference of the genius and disposition in the respective characters of the European nations. Notwithstanding their habitual communications, their common origin, and the same ancient feudal system, which established nearly the same ideas in every part of Europe, and impressed the same maxims, and the same distinctions in

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the mind—notwithstanding the prejudices of the early romantic system of chivalry and gallantry, the capricious code of military honour, and the harmony of their moral system, derived from one common religion, which, though it may have received some trifling alterations with certain nations, has always remained the same respecting its moral precepts, they do not resemble each other in their spirit and character, their genius and disposition. If this variety be not so striking as in the heroical ages amongst the ancient nations, who never approached each other but in war and for their mutual destruction, it is at least of too much consequence to be slighted by the legislator, and must still have a very sensible influence on the spirit of the laws. The cause of the variety is not here the question, its effects are solely the object of enquiry.

Borrowing an example from France, we there find a nation volatile, active, of great invention, of refined taste, and with such an excess of vanity as to give the most astonishing encouragement to the polite arts and elegant manufactures.

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In this nation the occupation of the husbandman, which is far removed from every thing that can flatter vanity, has great need of a decided support from the laws. Agriculture must be otherwise neglected and ruined. Without any attention whatever from the legislature the arts and manufactures will always flourish, and the French fashions will continue to give the taste to Europe. The taste of Paris will determine that of the neighbouring nations, and even the dress and ornaments of the female part of this voluptuous capital will be preferred to the chaster, but more simple, graces of unaffected nature. This unbounded empire over the regions of taste will be always in the power of the French without any encouragement from the state, but without this encouragement the country will be uncultivated and languish, as it has already languished, from the want of industry and tillage. Had the great Colbert perceived this truth, instead of sacrificing agriculture to the arts, by an encouragement of the former, he would have combined the advantages of both, and the glory of his administration might not have been yet problematical.

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Southward of France we see a people of a different genius, disposition and character. In the Spaniard there is a certain degree of probity, which embellishes his conversation, dignifies his friendships, and runs through the whole of his actions and engagements. His manners are, however, marked with an apparent stiffness; he has an attachment to ancient customs; he is superstitious; and from a spirit of pride supposes labour to be dishonourable, and exertion disgraceful. The legislator in his application of the laws to this nation should in some respects take advantage of the disposition and character of the people, and in others should correct them.

The national integrity and honour might be employed to promote their internal and external commerce, and their contracts might be stript of a great part of the pompous phraseology, which the legislature has introduced in other countries as bars against chicanery and fraud.* Their

* This would not be, indeed, the first instance in which the laws had entrusted their sanction to the character and genius

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natural stiffness might support the austerity of morals. The attachment to particular and ancient customs, might teach the legislator that the most useful innovation would probably at first be treated with contempt, and that in consequence, every new proposition should be weighed with caution, and adopted after the most prudential preparation. Their superstition should point out the necessity in Spain of an inquisition against excess of credulity, and impostors who profit by it, instead of one against irreligion, which is not a Spanish vice; and the legislation should be particularly attentive to the advancement of intellectual light and knowledge, in the progress of which the happiness of this kingdom is so much

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of the people. The Romans for a number of years had no particular punishment for peculation, and when this offence first appeared at Rome, it was so infamous that the restitution of the embezzled property was considered as sufficient. Plato observes, that Rhadamanthus, who governed a religious people, was satisfied with a proof of the charge by the oath of the party. Διδους γαρ περι ἑκαστων των αμφισβητεμενων ὁρκον τοις αμφισβητοῦσιν, απηλλαττετο ταχυ και ασφαλῶς. De Legibus. lib. 12. cap. 88.

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concerned. In the last place, from the spirit of pride, that looks down with disdain on labour and exertion, he might collect that Spain by its laws should not merely render industry and exertion profitable in order to promote them, but should ennoble and make them respectable, and for that purpose should apply the very spirit of pride that despises them to make them honourable. Let not the stale and hackneyed argument of impossibility be objected to propositions of this kind, for to a wise legislator scarcely any thing is impossible. If exile from their native country, as has been lately observed, became an honour with the Grecians, and even ostracism formed their last wish to the Gods as a reward for their most illustrious services, the objection will certainly appear less formidable. We have seen indeed within these few years, a northern nation receive a new character from its youthful sovereign, in spite of its inveterate habits and established usages. Ancient Sweden has ceased to exist since the late Gustavus mounted the throne, and a total change in the customs, manners, and even the dress of its inhabitants, was

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attempted and at once accomplished. The change that has been brought to perfection in one country may succeed in another with the same powerful and well digested means, and the possibility of a similar event in Spain is not to be doubted.

The influence of climate on the legislative system will be the next subject of enquiry. Philosophers and politicians have differed in opinion respecting it. The difficulty of treating a matter of so much obscurity, the numerous objections that oppose each other, and the obstacles in every attempt at generalizing the legislative precepts to be derived from it, will extend the discussion to some length. Yet the novelty, the importance, and the certainty of the inferences, may perhaps apologize for the prolixity.

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CHAP. XIII.

OF THE FOURTH OBJECT OF THE RELATION OF THE LAWS, THE CLIMATE.

An opinion has been entertained, and perhaps still subsists, that Montesquieu is the first author who has treated of the influence of climate, but this opinion is erroneous. The subject did not escape the sensible and amiable Fontenelle; and Chardin, one of the few travellers who thought, has deeply reflected on its physical and moral effects upon mankind. The Abbe Dubos has supported and explained Chardin's ideas; but Bodinus,* who had perhaps read in Polybius that it forms the figure, the complexion, and manners

* Methodus ad facilem Hist. Cognitionem. c. 5. This work was once much read, and much admired, but "habent sua fata libelli" is now sleeping in dust and silence. The author has diffusely entered into the influence of climate, and endeavoured to trace its moral and physical effects on the human frame and mind. Many subsequent writers have taken up the system, and borrowed ideas from Bodinus, without having acknowledged their obligations.

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of nations, had previously made it the basis of his system, and his method of history, fifty years before them. Hippocrates, however, first entered into the question at large in his interesting chapter on the effects of air, water and situation. The immortal author of " l'Esprit des Loix," therefore only made a few alterations in the principles of Hippocrates, and spread over a larger surface the ideas of Dubos, Chardin, and Bodinus. If this creative genius, accustomed so much to think for himself, has sometimes imagined that he invented when he only repeated the sentiments of his predecessors, it is a fault that the recollection of his eloquence, his erudition, and his beauties without number, will at once obliterate. The " inventis addere" is not a work of great difficulty, and a few observations are now to swell the number of those that have been already made on this subject.

Montesquieu has introduced some remarks on the tongues of sheep, on the pellicles of which little protuberances, covered with a species of the finest down, have been discovered, and amongst

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them small pyramids, with papillæ, that instantly disappear on their congelation, and from these he deduces the degree of sensibility, of force, courage, a greater or less degree of passion, and propensity to pleasure, in different climates.—Remarks, however, of this nature seem more proper for the history of microscopical experiments than a political treatise. Perhaps he thought it necessary to shew the most extensive influence of climate, in order to establish the hypothesis of its being the universal cause of every moral and political phenomenon. In the pursuit of his design, great boldness of genius is visible, though mixed with great extravagance; many of the observations are inexact, and the inferences are not always perfectly correct.

Are we to allow, with this celebrated writer, that the people of the south have been always conquered by the northern nations from the influence of climate, whilst history furnishes us with as many proofs in contradiction to the opinion as in its support? The Romans were themselves conquered by the northern people, and at

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a different period conquered them, and triumphed both over Britain and Sarmatia. Tamerlane from the extremities of India penetrated with his victorious arms into the frozen wilds of Siberia; and the Peruvians extended their empire over many people to the north of their nation and kingdom. The standards of the pious or superstitious leaders of the crusades were cut in pieces by the Saracens; and these new people, quitting the glowing sands of Arabia, spread by force of arms over many nations, triumphed over Spain, and carried desolation into the very heart of France. The Huns left their fens and marshes on the Mæotian Lake to explore more northern nations; and the Parthians became the terror of Rome, in an age when the Romans had not lost any of their ancient courage. In former ages the Persians and Egyptians were reckoned warlike nations; and yet Persia, in the reign of Cyrus, was not removed to a greater distance from the sun than Persia is at present. Laconia, peopled in our days by the wildest race of slaves, was once the seat of warriors and of heroes; and if Athens has no longer its Phocion, Thebes its Pelopidas, nor Rome its

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Decius, it is not the climate that should labour under the imputation of degeneracy.

Is it to be acknowledged, that from the influence of climate the northern nations have been more passionately attached to liberty, when we see despotism establish its empire in the suffocating sands of Libya and the frozen forests of the north; in the fertile plains of Indostan, and the dreary deserts of Scythia? Is it to be believed that the north was destined to be free, when we see feudality extend its destructive roots in Russia, Denmark, Sweden, Hungary, Poland, and almost the whole of Europe? Is it to be supposed that the influence of climate has condemned men to slavery, when the wandering Arab has eluded for so many ages the yoke of despotism, under which the Persian, the Egyptian, and the Moor, upon his very borders, groan? Are not the independent Tartars and the Siberian slaves to be found under the same parallel?

Are the frequent suicides in England to be attributed to its climate, when we have an instance

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of no less than fifty in one year at Paris;* when Geneva has ten or twelve in a year; when in Rome during six centuries that of Lucretia was only known, and afterwards without any alteration in the climate, within the space of a few years, Cato, Brutus, Cassius, and Anthony, fell by their own hands.

A review of all the effects attributed by Montesquieu to climate would reach to an enormous length. Reason and experience convince us that many of them may be deduced, if not wholly, at least in a great measure, from other causes.—Hume,† who has joined great philosophical knowledge with great strength of argument, has undeceived the public respecting these paradoxes, to which Montesquieu's epigrammatic elegance has given an air of truth. Extremes are notwith-

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* The year 1772.

† Hume's Essays. On the National Characters, Essay 21. Helvetius has taken the same ground in his Treatise de l'Esprit, as often as it was connected with the subject.

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standing generally erroneous, and perhaps both these celebrated writers are liable to objection; Montesquieu for having attributed too much to climate, and Hume too little. Taking the middle course between them, the following propositions may be suggested with more safety.

1. The climate has an influence over the physical and moral qualities of man as a concurrent but not an absolute cause.

2. Its influence is sensible and great in powerful climates, or very hot and very cold ones, but is scarcely discernible in temperate ones.

3. The sole position of a country respecting the sun, ought not to determine our opinion of its climate.

4. Whatever be the force of this influence, the legislator should not slight it. He should counteract its effects where they are hurtful; should take advantage of them where they are useful; and should respect them where they are indifferent.

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Of the influence of climate on the physical and moral qualities of man there cannot be a doubt. That igneous matter, which is scattered over the superficies of our globe, is certainly one of nature's most powerful instruments, and it is impossible such an agent should exist without important consequences. Both the vegetable and animal world experience its activity. Man, distinguished by reason from the rest of the animal creation, with the aid of his intellectual faculties may partly counteract the effects of this active power, though he may not be able wholly to destroy them. The excess or the scarcity of this matter spread through the atmosphere in which he lives, is the productive cause of heat and cold in different climates, and this heat or cold he may counteract; though it is out of his power to destroy entirely its operation or its agency. An extreme degree of heat, derived from the glow of a fiery sun or a local cause, must necessarily relax the fibres, by rendering them more delicate from an agitation of the humours; must weaken the body by too copious a perspiration; and must diminish the natural heat, which physiologists

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have demonstrated to be always in an inverse ratio to the heat of the climate. Is it possible for the moral part of man to be insensible to this physical change in his constitution? Even in mild and temperate climates on any excessive heat the mind seems to languish, and its active qualities are often reduced nearly to imbecility. A veil to appearance is spread over its ideas, an external force oppresses its intellectual faculties, and almost the power of exertion is suspended. The mind and the body are in fact so much united, that the shocks of one must naturally affect the other. It would be a species of folly then to suppose that the climate had not some influence on the physical and moral qualities of man; but there would be an equal absurdity in the supposition that it was the sole force which acted on him.

If the mind be subject to the shocks of the body, the body is likewise subject to those of the mind, for this mutual and reciprocal sensibility is derived from their natural and reciprocal dependance on each other. Education, the laws,

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religion, disposition, the maxims and principles of government, are, however, powers, which act on man in his civil character. They hasten or retard the expansion of his intellectual faculties, they promote, increase or restrain his passions, and tend to form the hero or the slave. These several moral causes united to philosophical causes, amongst which climate has sometimes the first place and sometimes the last, concur to modify man in his civil state, and to make him what he is. It might be difficult to determine with precision the different degrees of activity of these several causes, but in general terms, it is in a tribe of savages that physical causes have the principal and prevailing influence, and moral ones in civilized* society. It follows then that the

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* Hippocrates was above all other writers aware of this truth. After some observations on physical causes he observes, Περι δε της αθυμιης των ανθρωπων και της αναιδειης ότι απολεμωτεροι εισι των Ευρωπαιων οι Ασιηνοι, και ημερωτεροι τα ηθεα, αι ωραι αιτιαι μαλιστα, η μεγαλας τας μεταβολας ποιευμενοι ητε επι το θερμον, ητε επι το ψυχρον, αλλα παραπλησιαι.——Αι γαρ μεταβολαι εισι των παντων αι τε εγειρουσι την γνωμην τω ανθρωπω, και ουκ εωσιν ατρεμιζειν. Δια ταυτας εμοι δοκεει τας προφασιας αναλκεες ειναι το γενος το Ασιηνον· και

influence of climate acts as a concurrent cause on the physical and moral qualities of man, though not as an absolute one.

The second proposition, that the influence of climate is sensible and great in powerful climates, or very hot and very cold ones, but scarcely discernible in temperate ones, is next to be considered.

Man, according to the observations of physiologists, is only susceptible of a certain determinate

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πρόσετι δια τὰς νόμας· τῆς γαρ Ασιης τα πολλα βασιλευεται.——Οκου δε μη αυτοι ἑωυτέων εισι καρτεροι ανθρωποι, μηδε αυτονομοι, αλλα δεσποζονται, ἡ περι τουτεου αυτεοισιν ὁ λογος ἐστιν, ὁπως τα πολεμια ασκησωσιν, αλλ' ὁκως μη δοξωσι μαχιμοι ειναι. Οι γαρ κινδυνοι οὐχ ὁμοιοι εισι· τῆς μεν γαρ στρατευεσθαι εικος, και ταλαιπωρεειν, και αποθνησκειν ἐξ αναγκης ὑπερ των δεσποτων, απο τε παιδιων και γυναικος εοντας, και τῶν λοιπῶν φιλων· και ὁκοσα μεν αν χρηϊα και ανδρεῖα ἐργασωνται, ὁι δεσποται απ' αυτεων αυξονται τε και εκφυονται· τῆς δε κινδυνης και θανατης αυτοι καρπῶνται.——Οκοσοι γαρ ἐν τη Ασιη Ελληνες ἡ Βαρβαροι μη δεσποντα αλλ' αυτονομοι εισι, και ἑωυτεοισι ταλαιπωρεῦσιν, οὗτοι μαχιμωτατοι εισι παντων.——Δια τουτο εισι μαχιμωτεροι ὁι την Ευρωπην οικουντες, και δια τὰς νόμας ὁτι ου βασιλευονται ὡσπερ ὁι Ασιηνοι· ὁκου γαρ βασιλευονται, εκει αναγκη δειλοτατης ειναι. Hippocrates de Aeribus Aquis & Locis. sec. 39, 40, 41, 54.

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degree of heat. This heat is the aggregate of his own natural heat, and that of the atmosphere of the country in which he lives. In proportion therefore as the heat of the atmosphere increases his natural heat diminishes, and as the heat of the atmosphere diminishes his natural heat increases. In temperate climates the ordinary natural heat is equal to the heat of the atmosphere, or if there be any difference, it is so very trifling as to be insensible in its effects, if not in its intenseness. In powerful climates, or very hot and very cold ones, this difference must be very considerable, and consequently very sensible. If, as an example, the heat of the atmosphere in one country exceed by two thirds the natural heat, and in another country the natural heat exceed by two thirds the heat of the atmosphere, the alteration which it must produce on the mechanism of the inhabitants of those two countries must be so very great, and contrary, that its effects on their physical qualities, and on their moral ones in a great measure dependent on them, must be visible to the eye of the most superficial observer.

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The influence of climate in Greenland and Senegal is very forcible, and its effects on the temperament, the customs, the manners, and modes of life of the natives is consequently striking. In Paris, Genoa, Naples, and Constantinople, it is less perceptible. In these different cities its influence, it must be acknowledged, is different, yet that difference is so little and so insensible, that a strong predilection in favour of Montesquieu's system is requisite to perceive it.

On the enquiry into the third proposition, that the sole position of a country respecting the sun does not determine the nature of a climate, the question may be asked, if a hot and a cold climate, or a temperate and violent one, are not to be found under the same parallel? If the sole position of a country respecting the sun were to determine the nature of its climate, to calculate the degree of heat and cold, it would be only necessary to compute the degrees and minutes that separated the parallel under which the country was separated from the equator. The operation would be simple, and the geographer would

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have but occasion to climb the next mountain, or descend to the sea shore in the same latitude, to discover the fallacy. In two hundred places exactly under the same parallel there are scarcely two or three in possession of the same climate. Amongst many other shades of difference, more or less evident as local circumstances varied them more or less, he would often find a decided contrariety. Under the same parallel that Africa is scorched, the Cordilleras of Peru are covered with eternal snow. The whole rigour of the frozen zone also diffuses itself nearly over half of the new world, which from its position respecting the sun might be supposed to be blest with a temperate climate. Newfoundland, Nova Scotia, and Canada are situated under the same parallel which runs through France; the countries of the Esquimaux, Labrador, and the southern part of Hudson's Bay under that of Great Britain; but the difference in the climates is astonishing.*

* Robertson's History of America, book 4.

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It is not therefore the sole position of a country respecting the sun which determines the nature of its climate. What constitutes the nature of the climate is the constant degree of heat or cold which reigns in the atmosphere, and this does not depend entirely on the latitude, but on many local causes; the elevation of the country from the sea, the extent of the continent, the quality of the soil, the proximity of woods, the height and position of the neighbouring mountains, the usual winds, and many other similar circumstances.*

The fourth proposition, that whatever be the force of the climate's influence, the legislator should not slight it; that he should counteract its effects where they are hurtful; should take advantage of them where they are useful; and should respect them where they are indifferent; is most immediately connected with the subject of legislation.

* Varenius. Geographia Generalis. cap. 26. prop. 1.

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Though the influence of climate on mankind is not to be considered as a positive or absolute cause, but a concurrent one, yet as its effects are so very active on the physical and moral qualities, it deserves the legislator's attention. As these effects are, however, sometimes more perceptible and at others less; are more forcibly felt in powerful climates, and least in moderate ones; this diversity should have likewise a corresponding diversity in the legislative system.

The general maxim that "extremes meet," is strictly applicable to the influence of climate; for both in extreme hot and extreme cold ones, the expansion of the moral faculties of man is equally impeded by the climate. The natural heat of man being always in an inverse ratio to that of the climate, it must be extremely reduced in very hot ones, and extremely increased in very cold ones. These two opposite physical causes produce the same moral effects, and as they alter equally the natural mechanism of man, they equally impede the expansion of his moral qualities, which depend on his physical qualities.—

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The great relaxation of the fibres, the little attrition of the fluids, and that inertion incident to all animals in a hot country, reduce mankind to a state of great debility, little sensibility, and consequently to a species of stupidity. In the same manner an extreme rigidity, great tension of the fibres, great attrition of the fluids, and a great pressure of the arteries, with a thick inflammatory blood, necessarily produce in very cold climates torpidity and sluggishness. What are the consequences to be deduced? That to communicate the political motion, which is the life of civil society, the laws should have the greatest energy in powerful, or hot and cold climates; and that in temperate ones the legislature may be satisfied with the removal of the few obstacles which oppose its views. In the first situation, the most forcible means must be resorted to, great rewards, strong prohibitions, threats, hardy and laborious education. Emulation must be encouraged by the laws, and industry animated, not only by liberty, which in temperate climates is the parent of activity, but even by the munificence of government. These are some of the means with

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which the legislature should endeavour to counteract the effects of climate when they are prejudicial. But perhaps the very cause might sometimes be suppressed.

It has been observed, that local circumstances have an influence on climate; and in many instances local circumstances may be removed.—Whenever the influence which arises from them depends on vast woods, stagnant water, marshes, or similar causes, the legislature should exert itself, and, in support of population and agriculture, direct the woods to be cut down, the marshes to be drained, the courses and channels of water to be cleared and opened, and in a word, should soften the rigour of the climate by suppressing the cause of it. This is not a vain and idle speculation, for, in the history both of the old and new world, we may perceive the advantage of such experiments. The physical revolutions of the globe furnish millions of examples of the local change of climate in many countries, from the progress and decline of population, and the industry of the inhabitants. Even the mildness of

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the Italian sky, and the softness of the air, was scarcely perceptible after the ravages of the northern barbarous nations, who laid the country waste by their brutal and ferocious manners, their customs, and their laws. On the contrary, the population and the industry of the Dutch, animated by their wise legislation and their liberty, have improved their climate and purified the air of ancient Batavia. Similar causes have produced similar effects in many parts of Germany, England, and Pennsylvania. A wise legislator may, therefore, sometimes meliorate a rigorous climate, may almost always counteract its effects when prejudicial, and consequently with greater ease may take advantage of them when they are useful.

In our temperate climates nature, instead of retarding, quickens the progress of the human understanding, and the moderate elasticity of the air seems to destine the individual who breathes it to enjoy the exclusive gift of rapidly acquiring his whole activity.

Neither the extreme rigidity nor tension of the

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fibres from an excess of cold, nor their relaxation from that of heat, diminishes the sensibility of the mind, or destroys its powers. The energy of inclination is joined to the force of body, whilst the population is promoted by the fruitfulness of the sexes. From the mildness of the atmosphere a vast field is opened for industry, and all the arts and manufactures, including those carried on in the open air and those which want the assistance of fire, those of genius, and those where force is principally exerted, may be cultivated with the same success. With such numerous advantages how easily may the legislature encourage population, promote industry, the arts, public manufactures, and public instruction. In powerful climates, or very hot and cold ones, it has been remarked the laws should have uncommon energy; to obtain the same ends in temperate ones, like Italy, it would be only necessary to remove the few obstacles that oppose their progress. Little is required of the happy legislators of this happy country. Nature herself has pointed out the path by which the people may be conducted to prosperity!

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We have examined how the legislator should take advantage of the effects of climate when they may be useful; and the manner in which he is to respect them when they are indifferent remains only to be explained. To oppose the influence of climate would be an useless effort, it could not possibly be productive of any good whatever, and might be followed by the most pernicious consequences.

Where any particular species of industry, arts, or manufactures is opposed to the climate of a country, an attempt to promote it would be a gross error in the legislature. Notwithstanding the support, in all probability it would remain imperfect, and occasion a certain loss or ruin to the proprietors. The hands sacrificed in such pursuits might certainly have been employed with greater profit to themselves, and advantage to the state, in other manufactures more congenial to the country. Supposing it even to be overstocked with them, the surplus might be exchanged in other nations, and supply it with what it did not itself produce. Is it possible for the arts and

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manufactures which require a great degree of heat to be exercised with emolument or advantage in a very hot country, or those which require the open air to be carried on with any prospect of success in a very cold one? What opinion would be entertained of the legislator, who should propose to establish a glass manufactory at Zanguebar, and dock yards for ship building on the coast of Lapland? Man too far removed from the equator, or too near it, in a very hot climate or a very cold one, is incapable of that labour and those exertions which in a different climate he may undertake with ease.

The

"Non omnis fert omnia tellus,"

may be also said of man. To oppose nature in such situations, would be an absurdity as useless as pernicious. Let the legislature then endeavour to correct the effects of climate when they are prejudicial; let it take advantage of them when they are useful; and let it respect them when they are indifferent. Let it imitate the sage policy of the Hebrew legislator, who prohibited

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pork, and fish without fins and scales; directed abstinence; established fasts, and certain purifications; but never recommended the use of oil to a people who lived under a burning sky, and in a climate, where such a nutriment must be highly pernicious to the health of the inhabitants.

CHAP. XIV.

OF THE FIFTH OBJECT OF THE RELATION OF LAWS, THE FERTILITY OR STERILITY OF THE SOIL.

TERRITORIES in respect of their fruitfulness or sterility may be divided into three classes. In one the soil produces every thing without the least assistance from man. In another it only repays the husbandman in exact proportion to his labour: and in the third it continues barren notwithstanding his exertions and the sweat of his brow.—Under these three different points of view the legislator should contemplate the soil of his country. In the first case, where the soil from its fertility requires few people to cultivate it, the

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legislature without danger may protect the manufactures and the arts, because in a fruitful country they will never be so numerous as to deprive it of the hands necessary for its tillage. On the contrary, where the soil has occasion for great labour, the multiplication of the artists and manufacturers should be prevented by the laws, and an encouragement of them would be a serious injury to the state. The benefit of agriculture, which is always the first source of riches to a government, would be lost; the land owner would suffer; and the arts and manufactures would not themselves receive any real advantage. Perhaps they might be injured, as their export would be stopped by the rise of the wages of the manufacturer in proportion with the rise in the price of provisions, which is always occasioned by a defect of production rather than by an excess of consumption. Colbert fell into this error.

In the last case, where the sterility of the soil is not to be conquered by the labour of man, the laws should excite industry by every method; encourage the arts, and employ those hands in

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the manufactures, which the ungrateful soil refused to pay for their trouble; and by the vigour of commerce make amends for the avarice of nature. In this manner Athens was distinguished for plenty in the sands of the Piræus, and Tyre and Sidon became rich and flourished in the very bosom of sterility. Holland also, with a cloudy sky and a shaking soil, perpetually exposed to the insults and encroachments of the sea, has advanced her national grandeur by the force of industry and commerce, which are always most active and advantageous when united with liberty.

CHAP. XV.

OF THE SIXTH OBJECT OF THE RELATION OF LAWS, THE LOCAL SITUATION AND EXTENT OF A COUNTRY.

On the supposition that the situation and extent of a country have an influence on the species of industry peculiar to its inhabitants, they must necessarily have an influence on their legislative system. If a nation were to be situated on the

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sea coast, with the advantages of harbours and canals of communication, and had a people on its borders without arts or manufactures, and consequently unable to supply themselves with what they wanted, such a nation would have every inducement to become a manufacturing and commercial state, and the laws ought to second the designs of nature.

All these circumstances concurred in Holland, when the inhabitants of the United Provinces threw off the yoke of Spain, and first thought of their own interests. The sea, which washes the sides of the republic, offered it the productions of the whole earth, and opened to it a communication with the universe. The natural sterility of the soil, the scantiness of its extent, and the water which facilitates its internal communications in the act of overflowing the country, reduced it to the necessity of searching for the means of subsistence amongst other nations.—Europe, in which it occupied such an unfavourable situation, was then almost in a state of ignorance. Most of the nations by which it was

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inhabited, separated by wars and discord, satisfied themselves with the productions of their own ill cultivated territories, and with a paltry traffic confined within the limits of their own provinces. Every thing, in short, invited, or rather compelled the Dutch to become a manufacturing and commercial people. They saw in commerce, which in general is only a secondary interest, the firm and sole support of their subsistence, their liberty and lives. Without an extent of territory, and consequently without its natural productions, they determined to give every encouragement to those of other nations, in the confidence that universal prosperity would create their particular prosperity. The plan of their education, the maxims of their government, and their entire legislative system were directed to this single object, and the event has justified the wisdom of their conduct. But there is seldom the same coincidence of circumstances.

When Peter the Great, who would have accomplished more if he had undertaken less, first proposed to himself the idea of turning the atten-

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tion of his subjects to manufactures, arts and commerce, and of raising a formidable marine to facilitate and protect them, he did not perceive that the situation and extent of his dominions were in direct opposition to his projects. An empire which stretched to two thousand two hundred leagues in length, and eight hundred in breadth, but so ill peopled as to contain only six persons in a square league, could not spare its inhabitants for manufactures, the arts, and navigation, without the total ruin of agriculture. If its population had been even equal to its extent, and both the one and other could have admitted of the sacrifice, he would have met with a powerful impediment in its local situation. Russia has but a trifling extent of coast, a great part of it uninhabited, and most of it inaccessible; is without ports; and Cronstadt, which serves as a harbour for Petersburgh, is of itself one of the worst situated and most insecure in Europe.—The two seas which bathe the sides of this vast empire are also the least favourable of all others to navigation.

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Lastly, its proximity to England, Holland and Denmark, should have taught this prince that a commerce of property and produce was the whole commerce proper for this great monarchy, and that considering all circumstances, the transport trade should have been left to other nations.

A competition was what he should have provoked, but he wholly overlooked it. He left for a century the entire commerce of Russia in the hands of the English, who settled both the terms of the sales and purchases. The great art should have been to invite the Danes, the Dutch, and also the southern nations to a rivality with the English, instead of the fruitless attempt at the formation of a commercial navy. Russia would then have found the balance of trade in her favour, and she would have sold more than she was obliged to purchase. Yet these considerations did not prevail on the Czar to abandon his enterprizes. He had seen Holland flourish under the auspices of her marine, and he believed he should be able to attain the same ends by the same means, without a thought of the infinite

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diversity of circumstances. This fatal want of attention, or ignorance of the most necessary art for all governments, the art of combination, unfortunately prevailed during the administration of Peter I. and rendered his exertions more brilliant than useful. What real advantages did his subjects derive from the force of talents and exertions? He eradicated a few inconveniences, and introduced lasting evils. He gave undoubtedly to Russia painters, statuaries, manufacturers and pilots, but he increased the number of the wretched. He wished to begin where he should have ended; to polish his nation before he had rescued it from misery; to reform the manners before he had reformed the constitution; and to create a people like the Dutch and English in the midst of feudality and Russian despotism. From this want of combination his laws, his spirit, and his travels were useless, except for Petersburgh, and in the decoration of this production of his own he recalls only to remembrance the idea of that monstrous image, which has been read of, with a golden head upon feet of iron and clay. One general rule should be established. We should begin

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at the fountain head, and oppose nature as little as possible. On this principle, the situation and extent of a country, and the nature of its soil, are interesting objects, with which the legislator should combine his efforts on the introduction of a new code of laws.

Every little difference may produce the most important effects to nations, and consequently they should not be neglected in the system of their political œconomy.

An error, which owes its origin to the author of " L'Esprit des Loix," has put on the deceitful appearance of truth, and seduced many modern politicians. It has been generally believed that a wide and extended empire is not calculated for any government but a despotic one, and that the problem of the best legislation is only to be solved in small states.

Is, however, the extent of a country to deprive it of the first and best of blessings? Are great empires to languish everlastingly under the yoke

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of despotism? Is it true that great bodies are always the most imperfect, and that the chisel cannot as completely finish a Colossus as a small statue?

An opinion of this kind would be too deplorable and too humiliating for human nature. Let us recollect for a single moment the immense magnitude of the Chinese empire, and the praises which have been so profusely lavished on the moderation of its government, and the wisdom of its laws.

CHAP. XVI.

OF THE SEVENTH OBJECT OF THE RELATION OF LAWS, THE RELIGION OF A COUNTRY.

No object whatever has so much occupied the attention of the most celebrated legislators as the relation of the laws to the religion of the country. In the infancy of nations, religion consisted rather of a simple worship than an aggregate of tenets. The erection of an altar, the sacrifice of

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a victim, and a few pious libations, were considered as amply sufficient to appease the anger of the Gods, or obtain their favours, and this was termed religion.

The belief that virtue would be one day rewarded, and vice punished, by the Gods, was afterwards entertained; but the idea of this virtue and this vice was vague and erroneous. Religion sometimes directed what morality prohibited, and with the same inconsistency prohibited what morality recommended. Amidst this conflict between religion and morality, these errors, the wild and improper notions of vice and virtue, of good and evil, the laws should have interposed their authority, and supported with a firm hand what they endeavoured to overturn with the other.*

* When a respect for ancient customs, simplicity or superstition, has established any mysterious rites offensive to modesty in a republic, the law, Aristotle observes, (Polit. lib. 7. c. 17.) should permit the fathers of families to attend them instead of their wives and children. Suetonius, speaking of Augustus, informs us, "Lupercalibus vetuit currere imberbes:

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From the abominable divinities of the Pagans, it was not to be expected that the world could have received a pure system of morality. Their actions would have contradicted it, and their worship could not possibly have been separated from the records of their follies and their crimes, though a blind and stupid credulity had consecrated them along with the monsters who had committed them.

Greece and Rome considered the belief in oracles and dreams as religious duties, and the people regulated their actions by the declarations of the Pythia, the flight of birds, the appetites

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item, secularibus ludis juvenes utriusque sexus prohibuit ullum nocturnum spectaculum frequentare, nisi cum aliquo majore natu propinquorum," (Sueton. c. 31, vit. Aug.) that Augustus prohibited young persons of both sexes being present at such nocturnal assemblies, and on the re-establishment of the Lupercal feasts the young men were not suffered to run naked. It is also well known, though the celebration of the Phrygian rites, in honour of the Goddess Cybele, was allowed, the Romans were not permitted to take any part in them; and when this festival was afterwards adopted by the Romans themselves, every indecency and obscenity were rigidly proscribed.

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of their sacred chickens, and the observations of their Augurs and Haruspices, though they saw no necessity whatever for the virtues of chastity, sobriety, and temperance. Even the profligate being, who was supposed to have ravished Europa, and from more criminal motives to have carried off Ganymede in triumph, was revered as the supreme father of gods and men. The most atrocious crimes did not prevent the apotheosis or deification of some men; whilst the emblems of Venus, of the Graces and of the loves, displayed images of wantonness and debauchery, and encouraged the warmest and most lascivious desires. The obscene guardian of gardens, and the riotous patron of vineyards, had each a particular adoration; and a female goddess was honoured with equal fanaticism at Amathus, Cythera, Paphos, Gnidus, and Idalium, who wished for no other incense than what arose from the vapours of voluptuousness, or any sacrifices but those of innocence and modesty, and desired no worship but from the passions. Whilst the credulous polytheist saw himself surrounded with divinities, who patronized his vices and his pleasures,

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the manners, far from obtaining the least assistance from religion, received their severest wounds from its hands. From the wisdom of the laws they ought to have experienced their sole support, and the legislature should have taken care to have repaired the evils which religion occasioned, without destroying religion itself, so essential in many other respects to the welfare of the state. It is easy to conceive that obstacles would have been in the way of such an attempt, but in the present state of things, they would be trifling and unimportant.

Europe is now in possession of a divine religion, which does not obstruct but improve morality, and does not destroy but protect public society and public order. To the menaces of the laws against offence, it has added the idea of a just and omnipotent judge, from whom neither walls nor darkness can conceal iniquity or crimes. It is this religion, which restrains the passions, and is jealous not only of criminal actions, but criminal thoughts and wishes. It unites the individual with the individual; attaches the subject

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to the sovereign; disarms the injured, but directs the magistrate to revenge his wrongs. It prescribes a worship and some sacred ceremonies, but dispenses with them when the necessities of the state require it. With such a religion the legislator would have few embarrassments, and it would be his duty to protect it from the insults of incredulity and superstition. He should study to preserve its purity, which might be endangered by its enemies and its own imprudent ministers. These would be all the services required of him, and in return for them they would authorize him to expect every advantage from religion. Such is the difference between the relation of the laws to a false religion and to the true one. The principles which flow from the first must be principles of correction; from the latter principles of simple protection, and the prevention of abuses is the whole of this simple protection.

A body of laws which limited the number of ecclesiastics to the real wants of religion; which equally prevented the clergy from rioting in

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opulence or sinking into misery; which whilst it deprived one part of the order of their temporal power, secured the rest from poverty; which settled a regular and fixed stipend on every minister in proportion to his rank, his ecclesiastical dignity or functions, might prevent many abuses of religion, and prove its firmest bulwark. It would add personal reverence to the sanctity of the order, and augment the prosperity of the state. The truth of the observation is evident. Were the numbers of the ecclesiastics to be reduced to a proportion with the real wants of religion, the conduct of the whole body of the clergy would become more exemplary, and the character of every individual more respectable. Agriculture, arts, and manufactures, would receive an additional supply of workmen,* who had intruded into the church but to discredit it, and be a burthen to the state. The Roman catholic church,

* This chapter principally applies to the Roman catholic countries on the Continent, where the inferior clergy were generally supplied from the lowest classes of the people.

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where celibacy is annexed to the priesthood, as its numbers diminished, would in particular see itself less defiled by the impurities of its unworthy members; the private peace and conjugal honour of families would not be so often violated;* and population would not suffer by a sacrifice of the rights of nature.

Other advantages would likewise follow.—Were the clergy neither to riot in opulence, nor be distressed by poverty, the rest of the community would not be insulted with their parade and pomp, and could not look down with con-

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* Zuinglius, in an epistle to the Swiss Cantons, recalls to their recollection an edict of their ancestors, which directed every priest to retain a concubine for the purpose of preventing any attempts on the virtue of the neighbouring families. Father Paul has given the observation without a comment. "Scrisse ancora in propria difesa a tutti i Cantoni de Suisseri, facendo in porticolare mentione d' un editto dalli loro magistrati maggiori che *ogni Prete fosse tenuto ad haver la concubina propria, accio non insidiasse la pudicizia delle donne honeste.*" Ist. del. Concil. Trident, lib. 1. 16. Folio, 1619.—See also the 17th Canon of the Council of Toledo.

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tempt on their misfortunes or their misery. Were the state to support them, instead of private charity, their eloquence would not be degraded with imploring a subsistence,* which from their services they have a right to demand from the government. It would be converted to nobler ends and employed in sublimer duties. The gospel would be preached in its simplicity and purity; and both imposture and superstition, ceasing to be the source of riches, would be banished for ever from the pulpit and the altar. Thus should the christian religion be protected, and these are the general principles to be deduced from the relation of the laws to the religion of Europe.

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* Many of the mendicant orders in the Roman catholic countries are supported in a great measure by contributions, and from the "Quetes" which they make in the neighbourhood of their convents and monasteries. Sterne's monk must be familiar to the reader.

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CHAP. XVII.

OF THE EIGHTH OBJECT OF THE RELATION OF LAWS, THE MATURITY OF A PEOPLE.

All nations have their infancy, all states their origin in weakness. Like children they play a long time round their cradles before they have the strength to quit them, and the laws during this period must necessarily participate of their infancy and weakness. Their inconsistency and caprices are naturally communicated to their legislation, and appear in their modes of thinking, their manners, and their religious rites.

By degrees they advance in the career of life, their bodies sensibly expand, and they arrive at their full extension. The effervescence of childhood, followed by the vigour of youth, stimulates them to every undertaking, and the exertion of their fibres impels them to action. This is for states and man the era of passions, desires, hopes and dangers, and it is the age in which they either sink under their enterprizes, or grow rich by

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industry, and aggrandize themselves by conquests. Here the maturity of a people commences, and this is the precise moment when they should reform their laws.

During their childhood and their infancy, the legislation was adapted to their situation. As they now begin to act, action becomes a natural want; events crowd upon each other with rapidity; and the aspect of society daily changes with the change of interests, or the acquisition of new sources of riches or new dominions. At this interval a wise legislation should endeavour to supply the defects of the laws, and satisfy itself with their reformation. The great enterprize of levelling with the ground the ancient and venerable legislative edifice, which in the early years of a nation might be proper for it, but in its mature age will not admit of reformation, should be reserved till the fate of a people is fairly settled, and to a season of public tranquillity.

This season of public tranquillity, when the fate of a nation is determined, its true interests

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understood, and the materials for laying the firm foundations of a long and lasting prosperity are ready, must be derived from a series of fortunate events, and would be precarious without them.

Most of the nations of Europe have already reached this period of their political existence; but have they profited of the opportunity, and thought a single moment on the necessity of reformation? Their legislation in general is still unfortunately in its infancy.—They are governed by laws to which they have paid obedience for ten centuries. Nations were originally composed of hunters and shepherds, and in their laws they still continue so. A few trifling alterations have been made from time to time, but they have been framed and fashioned on the ancient system, which the legislature has not had the courage to abandon, and has left to subsist along with them. This immense pile of Mosaic work, of ten thousand fragments of different colours, size and shape, heaped on each other without order and without proportion, has received in many governments the name of jurisprudence. In the

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days of maturity their study has been merely to augment the heap. It has increased in bulk, but it has increased at the same time in deformity.

Such are the monuments of justice erected by most of the European nations, and such is the carelessness with which the great structure of their legislation has been raised.—Is it to be wondered that their prosperity should be so precarious, and their maturity should be so soon followed with that decrepitude which invariably leads to death?

People!—Do not yet despair.* The time for repairing these defects, and supplying the negligence of your ancient governments is not

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* Πρωτον μεν ουν ουκ αθυμητεον, ω ανδρες Αθηναιοι, τοις παρουσι πραγμασιν, ουδ' ει παυ φαυλως ειχειν δοκει· ὁ γαρ ισι χειριστον αυτων εκ τω παραλελυθοτος χρονω, τυτο προς τα μελλοντα βελτιστον ὑπαρχει· τι ουν ισι τυτο; ὁτι εδεν, ω ανδρες Αθηναιοι, των δεοντων ποιουντων ὑμων κακως τα πραγματα ειχει· επειτοιγε, ει παυθ' ἁ προσηκει πραττοντων, ὁυτως ειχεν, ουδ' αν ελπις ην αυτα βελτιω γενεσθαι. Demosthenis Philip. Prim.—Demost. Oper. 47. Folio; Francf. 1604.

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wholly lost. If any favourable moment for quickening the vegetation of the salutary plant of legislation hath been suffered to escape, rely with confidence on the wisdom, the zeal, and the talents of the present ministers of Europe.—Assisted by philosophy, enlightened by genius, on every subject respecting the public interest, and stimulated by a firm but temperate expression of your wishes, they will at a seasonable opportunity, enter on the important work. From the great events which are passing in the world, they will themselves see the necessity of reformation; they will call reason to their aid; and the supineness, or negligence of their predecessors will be amply recompensed. The weakness of your legislative systems will then not only vanish, but they will acquire with the vigour of youth, the hopes of immortality.

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THE

SCIENCE

OF

LEGISLATION.

BOOK II.

CHAPTER I.

OF THE LAWS OF THE ANCIENT NATIONS, AND PARTICULARLY THOSE OF GREECE AND ROME, RESPECTING POPULATION.

THERE are two objects of legislative and political œconomy—population and riches. Without men there could not be any society, and without the means of subsistence men could not themselves exist.—The strict connexion between these two objects is visible, and the former shall be first examined. It may not be here improper to consult the opinions of the ancient legislators, and particularly those of Greece and Rome, on

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the best method of contributing to the population of their country. Let us then penetrate into antiquity. Let us forget the distance of time which divides it from us, and let us freely exercise our judgment on the conduct of the most polished nations upon earth respecting the multiplication of mankind.

The legislators of every nation, in every age, and under every form of government, have considered the number of inhabitants of the first consequence to the state, and for this reason, its population has occupied their first attention. Of the Jews little will be said. The abomination in which celibacy and sterility were considered by those people is well known. A respect for the public opinion obliged the Hebrew to wish for children, and the fear of infamy seconded the voice of nature. The injunction to "increase and multiply," as Selden has remarked, was not more rigidly obeyed in any other nation,* and we

* See Selden De Uxor. Ebraicâ.—Selden De Jure Natural. et Gentium juxta Disciplin. Ebræorum, lib. 5. c. 6.

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may learn from scripture the rapid progress of their population.* Their laws originating from infinite wisdom were best calculated to obtain the object they had in view.—But it is unnecessary to enter into the history of the people of Israel, whose laws are so familiar to us. Turning therefore to other nations, Persia shall be the first taken notice of.

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* The immense population of the Jews may be known from the 5th and 6th verses of the first book of Chronicles, and the 9th verse of the 24th chapter of the 2d book of Samuel; and though the numbers do not exactly correspond, if the proportion of persons in the tribes of Levi and Benjamin equalled the rest, from the number of the people fit for service we may reasonably suppose a population of six millions. This is certainly an extraordinary population, as the extent of Palestine has been considered not to exceed a sixth of Great Britain.—Yet Josephus strengthens the calculation by his expression of "και πολεις πυκναι και το των κωμων πληθος πανταχη πολυανθρωπον," (De Bello Judaico, lib. 3. c. 3) in his description of Galilee, and the "το πληθυων ανδρων" when he speaks of Samaria, which was on its borders. Dion Cassius has also the expression of "το τε πληθος αυτων" (lib. 69) respecting the Jewish nation.

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Strabo* informs us, that the king of this beautiful and fertile country offered annually rewards to the persons who presented the state with the most numerous family; and the population of the country, as we are told by Herodotus,† was one of the great objects of their laws. Public opinion, their moral maxims, and even the religion, all concurred in the contribution of their influence to this common end.

The tenets of the Magi, whose creed was at that time the national creed, recommended the acts of "being a father, cultivating a field, and planting a tree," as highly grateful to the divinity. In the nineteenth article of their Sadder, which is an extract from their ancient and celebrated Zenda Avesta, there is also a passage of the

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* Τιθεασι δε και οι βασιλεις αθλα πολυτκνιας κατ' ετος. Strabo, lib. 15. 733. Fol. Paris, 1620.

† Ανδραγαθιη δ' αυτη αποδιδεικται, μετα το μαχεσθαι ειναι αγαθον, ος αν πολλους αποδιξη παιδας· τω δε της πλειστας αποδεικνυντι, δωρα εκπεμπει ο βασιλευς ανα παν ετος. Herod. lib. 1. 136.

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following import:—" Take a wife, Oh! young man, in thy youth, for this life is but a passage; let thy son follow thee, and suffer not the chain of beings to be broken." What more powerful means could the Persian legislators have adopted for the encouragement of the population of their country than calling to their assistance the combined efforts of the public opinion, morality, and religion? If their laws were, however, adapted with peculiar propriety to this purpose, those of the greater part of the Grecian republics were as efficacious.

Through the whole of Greece, if we are to believe the evidence of Musonius, celibacy was exposed to penalties or punishments. Whilst the laws offered personal rewards to the fathers of families, sterility in either sex was punished;* and as it was holden to be a crime for a person to put himself to death, celibacy was holden to be

* Τουτο δε πολυπαιδιας εταξαν γερας και ανδρι και γυναικι, και την απαιδιαν επιζημιον κατεστησαν. Musonius apud Stobæum, 450.

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a species of hereditary suicide. The laws considered suicide and celibacy as an abuse of the rights of society, and as offences that equally led to its destruction. The legislators, therefore, wished to alienate the people from this vice, and at the same time to animate them to the practice of the opposite virtue. This was the spirit of all the Grecian laws respecting marriage and celibacy; but, unfortunately, those of Athens and Sparta only have escaped the ravages of time.

At Athens, according to Dinarchus,* neither their orators nor military commanders could be admitted into the government of the republic before they had a family; and in Sparta, as may be gathered from Ælian,† the father of three

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* Και τους μεν νομους προλεγειν τω ρητορι και τη γεραιτερα των παρα τω δημω πιστιν αξιουντι λαμβανειν, παιδοποιεισθαι κατα τους νομους.—Dinarchi Orat. contra Demosthenem, 182. Francf. 1604.

† Η γαρ ου ταυτα Λακωνικα; Νομος εστι τοις Σπαρτιαταις, τον παρασχομενον υιους τρεις ατελειαν εχειν φησας· τον δε πεντε, πασων των λειτουργιων αφισθαι (Ælian. Var. Hist. lib. 6. c. 6). Aristotle

children was exempted from the duty of being on guard, and the father of five, from any tax to the state. As celibacy was also punished in both states, some precise terms of accusation were introduced, which may be seen in Julius Pollux.*

The legitimate union of the two sexes was from these circumstances a duty at Sparta, and not only a duty to be discharged, but at the age the laws thought most prudent and proper.† As

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supposes the latter privilege to have been allowed to the father of four children. Τον μεν γεννησαντα τρεις υἱεις, ἀφρουρον ειναι· τον δε τετταρας, ατελη παντων. Polit. 11. 7.

* —— Αγαμιων· παρα δε Λακεδαιμονιοις, και οψιγαμιου, και κακογαμιου (J. Pollux, lib. 8. c. 6). Σπαρτιατων νομος ταττει ζημιας, την πρωτην, Αγαμιας, την δευτεραν Οψιγαμιας, την τριτην και μεγιστην κακογαμιας. (Ex Aristonis Comment. apud Stobæum Serm. 64.) Taylor supposes the last to have been an action against "fortune-hunters," from the "τους αντι των αγαθων και οικειων τοις πλουσιοις κηδευοντας," (Vita Lysandri, sec. 31) Plutarch's explanation of the term.

† Even the Roman laws adopted some restrictions for this purpose, and one of the clauses of the lex Papia and Poppæa appears to have had this end in view. "Sexagenario masculo,

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a remedy for the mischiefs which they intended to prevent, they had recourse to public censure and infamy, the most salutary remedies in a republic, when its citizens have not learned to despise public character and public opinion.—Plutarch* states the punishment of celibacy to

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quinquagenariæ fœminæ nuptias contrahere jus ne esto;" and there was another ordinance, "Ut sexagenarii et quinquagenariæ, licet inierint matrimonium, pœnis tamen cælibatûs subsint perpetuo." Heineccius, lib. 1. c. 5—81, 82.

Some doubts have arisen on this law from a passage in Suetonius, and the commentators have entered into a verbose discussion of the subject. An abstract of their sentiments may be found in Heineccius, who seems (Comment. ad L. Jul. & Pap. lib. 2. c. 3) to have cut the Gordian knot with which his predecessors had been so much embarrassed.

* Ου μην αλλα και ατιμιαν τινα προσετθηκε τοις αγαμοις· ειργοντο γαρ εν ταις γυμνοπαιδιαις της θεας. Plut. Vit. Lycurgi, sec. 15.

Plutarch relates also an anecdote, which shews that exclusive of the punishments for celibacy at Sparta, old age was deprived of the respect and veneration due to it. When the celebrated general, Dercyllidas, appeared in one of the public assemblies, a young man, instead of rising up and giving him his seat, explained the motives for his want of respect by the

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have been an exclusion from the gymnastic games, and some other public marks of censure and ridicule; and Athenæus has recited others still more ludicrous.*

Such were the laws of the two principal republics of Greece for the encouragement of population; and though those of the other states have been lost in their passage to us, it may easily be supposed they were formed on the same plan. Many historical facts appear to make it probable,

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Ουδε γαρ εμοι συ τον υπειξοντα γεγενησκας (Vit. Lycurgi, 15). This insolent answer, far from being punished, was applauded, from the contempt and ignominy attending celibacy. "ωδις εμεμψατο, καιπερ ευδοκιμον οντα στρατηγον."

* Κλεαρχος ὁ Σολευς—εν Λακεδαιμονι, φησι, τας αγαμους αι γυναικες εν εορτη τινι περι τον βωμον ἱλκυσαι ραπιζουσιν, ἱνα την εκ του πραγματος ὑβριν φευγοντες φιλοσοργωσι τε και εν ὡρᾳ προσιωσι τοις γαμοις (Athenæus, lib. 13. 555). Plutarch hath also observed, "Ου μην αλλα και ατιμιαν τινα προσεθηκε τοις αγαμοις· εἱργοντο γαρ εν ταις γυμνοπαιδιοῖς της θεας. Τῶ δε χειμῶνος οἱ μεν αρχοντες αυτους εκελευον εν κυκλῳ γυμνους περιιεναι την αγοραν, οἱ δε τιμωντες ηδον εις αυτους ωδην τινα πεποιημενην, ὡς δικαια πασχοιεν, ὁτι τοις νομοις απειθουσι." Vit. Lycurgi, sec. 15.

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and amongst them the anecdote of Epaminondas, related by Diodorus Siculus. When this celebrated Theban general was mortally wounded, Pelopidas feelingly lamented the approaching death of his friend, without children. The dying warrior requested him to cease his lamentations, as he left his country two—the victories at Leuctra and Mantinæa.*

Happy age! fortunate republic! Where the first duty was to produce a family, and the citizen without children had occasion for two victories to expiate the shame!

In the Roman republic the laws for the promotion of population commenced almost with Rome itself. Romulus granted greater privileges to the fathers of families, gave almost unlimited authority to husbands over their wives, and to

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* Αναβοησαντων δε των παροντων φιλων, και τινος ειποντος ότι τελευτας ατεκνος, Επαμινωνδα, και δακρυσαντος, μα Δια μεν φησιν, αλλα καταλειπω δυο θυγατερας, την τε εν Λευκτροις, και την εν Μαντινειᾳ.—Diod. Sicul. Hist. lib. 15. c. 87.

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fathers over their sons,* and encouraged population by these privileges and the love of power, which has been proved in the preceding book to be the great principle of action in man, and every kind of government. Augustus declares, in his celebrated harangue reported by Dion Cassius, that in the earliest days of the republic the monarch, the senate and the people, made perpetually regulations to invite the citizens to marriage. Numa took more efficacious methods, by banishing prostitution,† as an enemy to population, and studying every mode likely both to incite

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* Ὁ δε των Ρωμαιων νομοθετης απασαν, ὡς ειπειν, εδωκεν εξουσιαν πατρι καθ' υἱου, και παρα παντα τον του βιου χρονον, εαν τε ειργειν, εαν τε μαστιγουν, εαν τε δεσμιον επι των κατ' αγρον ἐργων κατεχειν εαν τε αποκτινυναι προαιρηται (Dion. Halicarnass. lib. 2. 96) and this power extended even "και τα πολιτικα πραττων ὁ παις ηδη τυγχανῃ, και εν αρχαις ταις μεγισταις εξεταζομενος, και δια την εις τα κοινα φιλοτιμιαν επαινεμενος."

† It was a custom with the Romans for brides to sacrifice to Juno, the deity presiding over marriage, and touch her altar, to render her more propitious. From this circumstance the expressions of "Junonis tangere aram," and "nubere," became synonimous. Numa to put a stop to the corruption

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sons to request their father's permission to marry,* and to preserve them from the seductive vice of irregular connexions with the female sex, which renders the idea of matrimony intolerable to those who have lost all sense of the sublime pleasures of innocence, chastity, and virtue. In later times a censor was established, who had a watchful eye over celibacy, for the express purpose of

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of manners, directed that the female who had been guilty of prostitution with a married person, should not be admitted to this sacrifice without a previous and expiatory offering to the goddess, in a penitential and humiliating habit (see Heineccius, Comment. ad Legem Jul. Papiam Poppæam, lib. 1. c. 2). Festus has preserved this law of Numa. "Pellex aram Junonis ne tangito, si tangit, Junonis crinibus demissis agnum fæminam cædito" (Festus ad Vocem Pellices). The crines demissi were a token of mourning.

Aspice demissos, lugentis more, capillos.
OVID. EPIST. X. 137.

* Επαινειται δε των πολιτικων αυτω και το περι τον νομον διορθωμα, τον διδοντα τοις πατρασι τας παιδας πιπρασκειν, υπεξιλομενης της γεγαμηκοτας, ει τω πατρος επαινουντος και κελευοντος ὁ γαμος γινοιτο. Plut. Vit. Numa, 17.

A most powerful inducement!

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encouraging population, and instituted with this view a fine, with the title of the mulcta uxoria.*

Aulus Gellius hath preserved the fragment of an oration by P. Scipio Africanus, which proves that the censor did not satisfy himself with the mere punishment of celibacy, but granted numerous and great rewards to those citizens who had presented the republic with families.† Celibacy was in fact excluded from the public confidence,

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* Festus observes on the word uxorium, "pependisse dicitur, qui quod uxorem non habuerit, æs populo dedit," (ad vocem uxorium). And we learn from Valerius Maximus that "Camillus & Posthumius censores æra pænœ nomine eos qui ad senectutem cælibes pervenerant, in ærarium deferre jusserunt: iterum puniri dignos, si quo modo de tam justâ constitutione queri sunt ausi; cum in hunc modum increparentur. Natura vobis quemadmodum nascendi, ita gignendi legem scribit: parentesque vos alendo, nepotum nutriendorum debito (si quis est pudor) alligaverunt. Accedit his, quod etiam fortunâ longam præstandi hujusce muneris advocationem estis assecuti, cum interim consumpti sint anni vestri et mariti et patris nomine vacui. Ite igitur, & nodosam exsolvite stipem utilem posteritati numerosæ." Val. Max. lib. 2. c. 9.

† Aul. Gellii Noct. Attic. lib. 5. c. 19.

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and an unmarried person was deprived of the right of giving evidence.* It seems, however, that the Romans in earlier times continued to detest matrimony, notwithstanding all these precautions, so many laws for its support, and under the very eyes of a censor, who appeared to have no object but to encourage it. But to what purpose are encouragements when they are opposed by superior obstacles? How can the laws have the influence they ought to have, when the citizens are not in a situation to profit by them? Of what use was a censor in the midst of universal corruption? Accounts of the luxury of the Roman ladies have been transmitted to us, and we may form a tolerable conjecture of the corruption of their manners, from the extravagance of their dress and ornaments, and the numbers of their ministers of voluptuousness. We are not unacquainted with the progress of incontinence at

* The first questions which were asked, were "Ex animi tui sententiâ æquum habes? Tu uxorem habes?" And without this double requisite the law doubted of the competency of the evidence.

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Rome, and the multitude of slaves; and we learn from history, that Asia and Africa were ransacked to supply this miserable class of beings, destined to be the instruments and victims of Roman luxury and insolence.* Agriculture languished in Italy;† the country, deserted by the freed-men, was inhabited by slaves,‡ and the earth, moistened

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* All the ancient writers speak of the continual introduction of the multitudes of slaves into Rome from Syria, Asia Minor, Thrace, and Egypt; and it appears from Strabo that the traffic was carried to great excess. Η Δῆλος δυναμενη μυριαδας ανδραποδων ανθημερον και δεξασθαι και αποπεμψαι. Strabo, lib. 14. 985.— And from a melancholy event at Rome we know that a single consular house contained four hundred, who were put to death on the murder of their master, "per insidias serviles, quas nemo prohibuit nec prodidit." Tacit. Annal. lib. 14. As Rome was filled with slaves, its citizens decreased.

† Many of the writers of the Augustan and succeeding ages admit the decline of agriculture in Italy, and amongst them Columella, Proem. lib. 1. c. 1—7. Varro, lib. 3. c. 1. Suet. Vit. August. c. 42.

‡ This appears to have been too generally the case, from the united testimony of many Latin authors. Arata quondam populis rara, singulorum nunc ergastula sunt. (Senec. excerpt. Controv. lib. 5. con. 5). Quænam ergo tantæ ubertatis causa

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by the tears of these unfortunate wretches, lost, under their servile hands, its ancient and original fertility. Civil discord, the fears of tyranny, suspicions, the vengeance of ambition, and the bloody conflicts of rising despotism with dying liberty, swept away a numerous portion of the best friends to their country, and deprived the rest of tranquillity and safety.*

What efforts could the feeble laws make against the destructive influence of all these combined

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crat? Ipsorum tunc manibus Imperatorum colebantur agri (ut fas est credere) gaudente terrâ vomere laureato, et triumphali aratore.——At nunc eadem illa vincti pedes, damnatæ manus, inscripti vultus exercent (Plin. Hist. Nat. lib. 18. c. 3). Ὡς ταχυ την Ιταλιαν ἁπασαν ολιγανδριας ελευθερων ἐστεσθαι δεσμωτηριων δε βαρβαρικῶν εμπεπλῆσθαι (Plutarch. Vit. Gracchi). And Livy, speaking of the country and territories of the Volsci, observes, "Quæ nunc, vix seminario exigno militum relicto, servitia Romana ab solitudine vindicant (lib. 6. c. 12). See also Sigonius, lib. 11. de Aut. Jur. Civil. Rom. c. 6. Lips. lib. 11. Elect. c. 15. And Casaubon. ad Suet. Cæsar. c. 42. August. c. 42.

* See Appian de Bello Civil. lib. 2.

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powers? Both Cæsar* and Augustus saw population continually on the decline, and marriages become every day less common. Without destroying the cause, they were desirous of weakening its effects, and, amongst other expedients, they endeavoured to incite by new allurements, the citizens to become husbands and fathers, to which they had such a determined aversion. They established again the office of censor,† and

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* Cæsar, after the civil war, only found 150000 citizens, (Suetonius Vit. Cæsar. c. 41;) and by a reference to Livy for an account of the number of the Roman people, the amazing loss of population will be very evident. If the report of Fabius Pictor, (Liv. lib. 1. c. 44) is not exaggerated, the numbers of Roman citizens were then double to what they were in the time of Cæsar, for they are stated under Servius Tullius to amount to 80,000 men fit for military service. Exclusive, however, of this statement, in later enumerations of the people from the fourth to the seventh age of Rome, and all the eighteen reports mentioned by Livy, previous to the days of Cæsar, they exceeded 200,000; seven of them 250,000; five 300,000; three 350,000; and two 400,000.

† Dion Cassius observes of Cæsar, "και γαρ εκεινος τα τε αλλα ωσπερ τις τιμητης εποιησε" (lib. 43. 25;) and in his account of Augustus he remarks, "παντ' ὁσα εν τῃ δημοκρατιᾳ μεγα παρ' ἐκεινοι

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were desirous of executing it in person; but if a censor be sometimes able to preserve the manners of the state, he is never able to restore them. Other regulations were introduced, yet all were ineffectual. Cæsar offered rewards to the fathers of numerous families,* and he prohibited the use of jewels and litters to that part of the female sex which had reached the age of forty-five in a single state.† It was an excellent expedient, as Montesquieu has justly observed, and struck at the root of celibacy by the support of vanity.‡

Augustus did even more. He increased the penalties on celibacy, and added fresh rewards

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σφίσι ισχυσιν, αυτοῖς τοις ονομασι χωρις τῆ της δικτατωριας" (lib. 53. 17). Yet it has been doubted if Augustus ever took the name of censor, though it appears from the "Censores creari desitos longo intervallo creavit" (Sueton. Vita Augusti, c. 37) that he revived the office.

* Suet. Vit. D. J. Cæsaris, c. 20. Dion Cass. lib. 43.

† Eusebii Chronicon.

‡ Methode excellente d'attaquer le celibat per la vanité.—De l'Esprit des Loix, liv. 23. c. 21.

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to those already settled on the fathers of families. These laws, it must be admitted, went directly to their object, but they had a thousand obstacles to struggle with. The Roman nobility annually endeavoured to procure a repeal of these very laws, and their continued and outrageous opposition to them gave occasion to the celebrated harangue of Augustus, reported at large in Dion Cassius, which appears to have been dictated by the gravity of a censor, and discovers the deplorable situation of the republic, consumed by a slow fever, and conducted insensibly by it to destruction. After shewing the advantage of population, and the necessity of marriages to supply the loss of the citizens in battles, by epidemical disorders, and civil discord, and endeavouring to remove the aversion to matrimony by an augmentation of the reward to the fathers of families, and their admission to the magisterial offices, he proceeds to animadvert on celibacy, and discovers his opinion of the unmarried citizens by his embarrassment in the application of a proper term to them. "They are not men," he observes, "because they have not given any

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proof of being men. They are not Romans, for they have not been solicitous to serve the republic. They are homicides, for they have deprived the state of the citizens to whom they might have given birth. They are impious, because they have disobeyed the deities of their country. They are sacrilegious, because they suffer their family images and the names of their ancestors to perish. And they are perfidious, because they have endeavoured to destroy their country, and to deprive it of its inhabitants." He adds, "that he is in want of a term to express his sentiments of them; and he commands them either to quit the republic, if they had any personal value for him, and had not from motives of flattery and adulation conferred on him the title of the father of his country, or to marry, and by the production of a family, give him an opportunity of sharing in the happiness of the republic, and being worthy of the sublime name with which they had honoured him."*

* Θαυμαζον μεν τι πεισοιθα, ω, τι αν ονομασαιμι ὑμας; ανδρας; αλλ' ωδεν ανδρων ἐργον παρειχεσθε. Πολιτας; αλλ' ὁσον ἐφ' ὑμῖν, ἡ πολις απολλυται. Ρωμαιους; αλλ' επιχειρειτε το ονομα τουτο καταλῦσαι· ου

In this manner Augustus concludes his celebrated harangue, and it was soon followed by the "Lex Julia, and Papia Poppæa," from the names of the two consuls, who were in office during a part of the year. The magnitude of the evil appears even in the election of the two consuls, for they were both, as Dion Cassius informs us, unmarried and without children.* The efforts of Augustus were not, however, successful, and the Romans continued to have the same

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μην αλλ' εγωγε ὁιτινες ποτε εἰσι, και ὅ, τι δη ποτε χαιρετε ονομαζομενοι, παρεκδοξον μεν τι παθος πεπονθα· ὑπερ γαρ τῆς πολυανθρωπιας ὑμῶν αἰει τε παντα ποιῶν και νῦν επιτιμησειν υμιν μελλων, απδῶς ὑμᾶς ὁρῶ πολλες ὀντας· και μᾶλλον αν εβουλομην τοσουτους μεν τους ετερους εκεινους, ὁις ὁσοι ὑμεις ὁρασθε ὑμας δε δη μαλιστα μεν συν εκεινοις τεταχθαι, ει δε μη, μη ειδεναι· ὁιτινες ουτε της τῶν θεῶν προνοιας, ουτε τῆς τῶν προπατορων επιμελειας ενθυμηθεντες, επιθυμειτε πᾶν μεν το γενος ὑμῶν αφανισαι, και θνητον ὀντως ποιῆσαι, πᾶν δε το Ρωμαιων εθνος φθειραι και παυσαι· τι μεν γαρ αν ὑπολειφθειη σπερμα ανθρωπινον, αν τα αυτα ὑμιν και ὁι αλλοι πραξωσι παντες; Dion Cassius, lib. 56. 4.

* Ὁ, τι Παππιος και ὁ Ποππαῖος νομος ὑπο τι Μαρκυ Παππιυ Μυτιλυ και ὑπο Κυιντυ Ποππαιυ Σεκυνδυ τῶν τοτε εν μερει τυ ετους ὑπατευοντων, ετεθησαν· και συνεβη γαρ, αμφοτερους σφᾶς μη ὁτι παῖδας, αλλα μηδε γυναῖκας εχειν· και απ' αυτυ τουτου ἡ αναγκη τυ νομυ κατεφωραθη. Dion Cassius Hist. Roman. lib. 56. sec. 10.

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aversion to matrimony and families. Tacitus, speaking of the manners of the Germans, observes, "Numerum liberorum finire, aut quemquam ex agnatis necare flagitium habetur: plusquam ibi boni mores valent, quam alibi bonæ leges;"* and alludes, undoubtedly, to the profligacy of the Roman people. To elude the penalties of the Papian Poppæan law, they married, and after the birth of a son, either divorced their wives, or resorted to the infamous practice of procuring their miscarriages. They had recourse to these shameful means, as the Papian Poppæan law excluded an unmarried person from any hereditary succession, or legacies from strangers, and gave only half to a married person without a child.†

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* Tacitus de Moribus Germanorum.

† See the 36th and 37th clauses of the Papian Poppæan law. "Cælibes, nisi intra centum dies huic legi paruerint, neque hereditatem neque legatum ex testamento, nisi proximorum capiunto."——"Si qui conjugum masculus (ultra xxv annum) femina ultra vicesimum orbi erunt, semissem relictorum tantum tantum capiunto;" and also the Commentary of Heineccius on the Papian Poppæan law, lib. 1. c. 5.

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For this reason, Plutarch observes, the Romans married to become heirs, and not to have heirs.* The rewards, therefore, offered by Augustus to encourage population, were not of any service to the state. The evil was beyond the reach of the remedy, and the obstructions were superior to the force employed for their removal. The Germans, as we have seen by the passage from Tacitus, without penalties and without rewards, considered matrimony as the first duty of the individual, and a family as the greatest advantage of marriage. The Romans, on the contrary, with all their recommendatory and restrictive laws, detested the former, and feared the latter.†

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* Ῥωμαιων πολλοι γαμουσι και γεννωσιν, ουχ ινα κληρονομους ἐχωσιν, αλλ' ινα κληρονομειν δυνωνται. Plutarch de Amore Prolis. Op. tom. 7. 921. Edw. Reiske, Lips. 8º 1777.

† Pliny in the recommendation of his friend Rufus points out the merit of a numerous family. "Sunt ei liberi plures. Nam in hoc quoque functus est optimi civis officio, quod *fœcunditate uxoris large frui voluit eo seculo* quo plerisque etiam singulos filios orbitatis præmia graves faciunt," (Epist. lib. 4. Epist. 15) for it was in general neither wished for nor desired. Petronius

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What opinion is then to be entertained of these laws of Augustus? Were they the best that could have been devised? Laws cannot be supposed to be good laws which do not produce the effect which the legislature expected from them, and their inutility can never be a matter of indifference. In many cases it may be erroneous to judge of a system from its effects, but the subject of legislation is an exception to the rule. The means which the ancient legislators adopted for the encouragement of population, have been more fully examined, in order that a better idea may be formed of the present laws in Europe on this subject, and on their propriety and use. An enquiry of this nature will include the question, if the population of Europe be at present carried to its greatest possible extent.

Arbiter has stated the public sentiment of the times. "In hac urbe nemo liberos tollit. Quia quisquis suos habet hæredes nec ad cænas nec ad spectacula admittitur, sed omnibus prohibetur commodis, inter ignominiosos latitat. Qui vero nec uxores umquam duxerunt, nec proximas necessitudines habent, ad summos honores perveniunt." And we may collect

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CHAP. II.

OF THE PRESENT STATE OF POPULATION IN EUROPE.

MANY writers have exercised their abilities on the question—whether Europe be as populous as it has been. Yet their reasoning has been often fallacious, and their calculations sometimes chimerical. Vossius and Wallace have surfeited every reader of sense and understanding. These two learned men were far from philosophers, and in their defence of antiquity, have abandoned all the rules of sound criticism, perverted history to establish a system, and, like many orators, made a powerful display of their talents in support of a feeble cause. After the light which Hume* has

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from Amm. Marcellinus, that the same corrupt ideas prevailed in his days. Vile esse quidquid extra urbis pomœrium nascitur æstimant, præter orbos et cælibes; nec credi potest, quâ obsequiorum diversitate coluntur homines sine liberis Romæ. lib. 14. c. 6.

* Hume's Essays. Essay on the Populousness of the Ancient Nations. Hume in this essay has also termed the ideas of Vossius on this subject "extravagancies."

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thrown upon the subject, a doubt can no longer remain of Europe having increased in population, notwithstanding its decline in a few particular places.

Is it, however, pushed to the extent it might and ought to be? This is a much more interesting question, and of less difficulty, though there may be some danger in the explanation, and some humiliation for the persons principally concerned in it.

The most certain evidence of the state of population in a country, is the state of its agriculture. If it be far from that degree of perfection to which it might be carried; if one part of the country remain uncultivated, whilst another does not produce what with proper management might be procured from it; if part of it be overrun with useless bushes and brambles; if the soil which is fertile be condemned to supply a poor and ordinary pasturage, and, in a word, its inhabitants require from nature much less than she would yield to their industry; without any calculations

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or conjectures, it may be affirmed with certainty, that its population is not what it ought to be.

This is a truth so clear and self-evident, that a single argument need not be advanced in its support. Taking, therefore, the principle to be established, let us cast a glance over Europe, and take a philosophical view of its present state.

At our entrance on this political survey, we may ask the question, what nation in it can boast of having pushed its population even to mediocrity, instead of the last degree of perfection? What country does not exhibit one half or a third part of its soil uncultivated, covered with useless wood and bushes, overflowed with water, or in waste and barren pasturage? Where is the people in Europe that can say with the Chinese, "Every inch of land which we inhabit supplies us with subsistence—we do not share with the wild beasts its precious productions—the rice which is our general food covers the whole face of our vast empire—our streams are the places on which we build, when we are able, our

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habitations—we have constructed those floating villages that we might not defraud the earth of the cultivation of that part of it, which our cottages would have encumbered—the trees which once interlaced their branches with each other, and spread over tracts of fertile land, by a wise œconomy are confined to those places which are fit for no other purpose. The earth which in other countries rests in inactivity, part of the year is forced by our industry to yield us three crops annually, and the generosity of nature repays us in exact proportion with our attention to her." With a few exceptions, how different would be the language of Europe! As we advance indeed from the capitals of the great states, where a vast consumption gives a degree of spirit to the adjoining territories, we discover in general, the melancholy spectacle of sterility. It is to be feared then that the state of the agriculture of Europe proves the unfortunate state of its population. What are the consequences to be deduced from this reflection? That the legislature of Europe is defective, because in a question of politics, we may safely judge of the nature of a

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cause from its effects. In the common course of things, human nature tends to multiply itself prodigiously. Whenever a person can maintain a wife and family without difficulty, he never fails to second the wish of nature. The pleasure of perpetuating himself in his posterity, and the delicious transports of conjugal endearments, are so attracting, that when there is not an utter impossibility of subsistence, they are irresistible. Some masterly hands* have already demonstrated the certainty of the observation, and the experience of every age has verified it.

In every state, therefore, when the population, without some extraordinary visitation of Providence, does not increase, increases slowly, or in other words, does not increase in proportion to the natural fertility of the country, it must be acknowledged there is a political defect, and this political defect is in exact proportion to the difference between its actual population, and the

* Amongst many others Mirabeau "l'Ami des Hommes."

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extent to which it might be carried.* A comparison of the number of married and unmarried persons in Europe, will point out, without any calculation, the defects of its political system, and the destructive errors of its present legislation. Its legislators have indeed perceived the evil, but have they discovered the cause of the complaint, and found a remedy? They have done what the physician does, who endeavours to destroy the effects of a disorder of which he is unable to ascertain the cause. They have offered a few rewards in favour of matrimony; given some privileges to the fathers of families; extended a few trifling exceptions to individuals with a certain number of children; and deprived celibacy of some prerogatives; but have left, in a great measure, the obstacles which prevent marriages in general.

Remove the obstacles and impediments in the

* See the Treatise of the Comte de Verri, with the title of "Meditazioni sull' Economia Politica," sec. 20.

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way of population, and it will want neither allurements nor rewards. In the words of Pliny, "Nihil largiatur princeps, dum nihil auferat; non alat, dum non occidat, nec deerunt qui filios concupiscant.*" Instead, therefore, of its rewards and recompences, the science of legislation should be directed towards its obstructions. It should examine the obstacles which retard the progress of population, and the means that may be employed to remove or overpower them. These two objects will comprise the whole of this science respecting the multiplication of the species. Previous, however, to an examination of the subject, one general principle may be laid down, which has been adopted as an axiom by all the modern writers on political œconomy.— "Every thing which tends to render subsistence difficult, tends to diminish population."

* Plinii Trajan. Panegyr.

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CHAP. III.

THE UNEQUAL DISTRIBUTION OF LANDED PROPERTY AN OBSTACLE TO POPULATION.

PROPERTY generates the citizen, and the soil unites him to his country. The person who only vegetates from day to day by a precarious subsistence, has an aversion to matrimony, and dreads the expences of a family. The land-owner, or person of property, is desirous of both the one and the other. Every child is considered as a blessing from Providence, and affords him the pleasing prospect of support in his old age, and an heir to whom he may leave his fortune. Not to wander, however, from the subject, on the admission of the axiom, "that every thing which tends to diminish subsistence, tends to diminish population," the scanty numbers of freeholders, and the immense numbers of persons without property, must necessarily produce this effect.

If we draw our observations from the state of all nations, and dip into the great volume of

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society, we shall find mankind divided into two separate classes, with opposite and jarring interests—land-owners, or proprietors, and persons without property, or labourers for hire. These two classes have, unfortunately, different political interests. Moralists have in vain attempted to bring them into an amicable compact with each other; but the landholder or person of property, will always endeavour to obtain the service of the labourer, at the least possible price, and the labourer in his turn, endeavours to get as high a price as possible for his services. In this negotiation, one of the parties must be unsuccessful. The most numerous class must fail, and that class contains the persons without property. By an enormous defect of the legislature in Europe, the proprietors will scarcely admit of a comparison with the persons without property. This unfortunate disproportion arises from a want of subsistence with a great number of individuals, of whom the class of labourers is comprised. The want of employment for numbers must also lower the price of wages. Fifteen or twenty-pence, are the common daily wages of a labourer in

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husbandry,* and he can only find employment for some months in the year. A third may be deducted from this sum, because, from the inclemencies of the weather, and other accidents, he does not work a third of the year. Is it possible the wants of a family can be supplied out of ten or twelve-pence a day?

We need look no further for the cause of the misery of a great part of the lower class of people, and it takes away from them all the hopes, the desires, and the means of raising a family, by a connexion incompatible with misery, and which is most fatal when it produces or increases one.

Fact and experience may perhaps, in a few instances, be brought to invalidate this reasoning. Montesquieu remarks, " C'est la facilité de parler, et l'impuissance d'examiner, qui ont fait dire

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* In England the price has been raised to two shillings and sixpence; but perhaps the rise in the price of provisions may be nearly equivalent and adequate.

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que, plus les sujets sont pauvres, plus les familles sont nombreuses".* Undoubtedly they are. People who have nothing, like beggars, have generally large families, and Montesquieu himself explains the circumstance. " C'est qu'ils sont dans le cas des peuples naissans: il n'en coute rien au pere pour donner son art à ses enfans, qui meme sont, en naissant des instrumens de cet art.†" Yet they who are poor because they are deprived of property, and are not able to support a family by their labour, reduced in value from the numbers who want employment, most certainly produce few children for the state. With a bare and scanty maintenance for themselves, can they think of dividing it? In their sickness and debility, is it to be believed they should wish for children, who are in a perpetual state of debility during their infancy?

" Quit the capital," persons may reply, " go

* De l'Esprit des Loix, liv. 23. c. 11.

† De l'Esprit des Loix, liv. 23. c. 11.

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into the interior part of the country, and visit the feudal dominions of a powerful lord, the sole master of the soil, you will there find men constrained to gain a livelihood by daily and severe labour, for poor and trifling wages. You will see them condemned to a life of trouble; misery painted on their squalid countenances, and you will find it nestling in their very beds. Yet these beds you will find shared with a partner of their cares, and almost every individual seeking a consolation for want and penury in the innocent pleasures of nature, and the transports of nuptial happiness." Of such advocates for poverty, the question may be asked—if marriages were so frequent at a distance from the capital, would not the population of the country receive daily additions to it? As we advance, however, from the capital, we certainly find the country less inhabited, and its population far from increasing, insensibly diminishing. The fact, therefore, is either not true, the children born of these unfortunate marriages perish at the dawn of existence, or the conjugal bed is itself unproductive, when washed by the tears of misery.

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But we are wandering from the subject—let us return to it, and consider the steps the ancient legislators took to prevent a defect of population, and those that might be at present proper for the purpose.

Every society commenced its operations with the distribution of the soil, and Agrarian laws were the first laws of an infant state. Their first object was the allotment of an equal portion of land to every individual; the second was to secure that allotment as much as possible against any alterations. Moses ordered, for this purpose, the restoration of all property on the year of every jubilee.* The Hebrew, therefore, could not divest himself of his own property for ever, and the sale of it could only be valid for a certain period. The jubilee year was this period, beyond which it could not reach by law, and the purchaser was then obliged to return it to its

* Zeppara. De Legibus Mosaicis Forens. lib. 4. c. 23. p. 609, 610.

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original owner or his family. The regulation extended to the sale or transfer of every species of property, and Moses introduced it in order to prevent too great an increase of the class of people without property, and the means of sufficiency for the subsistence of a multitude passing into a single hand.

This was also the undoubted object of the Athenian laws, which prohibited the citizens from disposing of their property by will;* prescribed an equal division of the paternal fortune amongst the children;† did not permit a person

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* Solon dispensed with this prohibition in the cases of persons dying without sons. Ὁ δ' ὦ βυλεται τις επιτρεψας ει μη παιδες εισιν αυτῳ, δοναι τα αὐτου (Plutarch. Vita Solon. 21) and permitted them to substitute heirs for their sons who died before the age of twenty. Σκεφασθε δε και τονδε τον νομον ὃς κελευει, την διαθηκην, ἣν αν παιδων οντων γνησιων ὁ πατηρ διαθηται, εαν αποθανωσι οἱ παιδες πριν ηβησαι, κυριαν ειναι. Demosthenis Orat.

† Ἁπαντας τους γνησιους υἱους ειναι των πατερων. Isæus de hæred. Philoctemonis.

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to succeed to the property of two persons;* allowed of the marriage of the sister by the father's side, though not of the mother's;† and obliged the next relation on the father's side to marry the heiress.‡

Lycurgus, carrying his views still farther, did

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* Philolaus established at Corinth a legal regulation, that the number of inheritances should always correspond with the divisions of land. Και τουτ' εστιν ιδιως υπ' εκεινου νενομοθετημενον, οπως ὁ αριθμος σωζηται των κληρων. Arist. de Republica, lib. 2. c. 12. And Montesquieu has explained the reason of this law. Elle prenoit son origine, du partage égal des terres, & des portions données a chaque citoyen. La loi n'avoit pas voulu qu'un seul homme eût plusieurs portions. De l'Esprit des Loix, liv. 5. c. 5.

† Εξειναι γαμειν τας εκ πατερων αδελφας. Petit in Leg. Att. lib. 6. tit. 1. Considering this as a mere legal restriction, by the marriage of the sister on the father's side, a person succeeded only to the fortune of the father; but by a marriage of the sister on the mother's side, he might succeed to the fortune of both the father and the mother.

‡ Μη εξειναι ταῖς Επικληροις εξω της αγχιστειας γαμειν, αλλα προσηκον ειναι αυταις μετα των χρηματων τῳ εγγυτατω γενους συνοικειν. Petit in Leg. Attic. lib. 6. tit. 1.

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not allow of any dowries; directed the children should equally share the father's patrimony; and that the fortune of the person dying without children should be distributed amongst those who had the most.*

The Germans adopted other methods, as appears from Tacitus, and almost annihilated property, by multiplying the number of proprietors. The nation was, in fact, the sole and perpetual proprietor, and distributed every year its property to the fathers of families.† The partition took

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* Plutarch. Vit. Lycurgi. Plutarch, however, applies to it the term of "νεανικωτατον."

† This may be learnt from Tacitus. Agri pro numero cultorum ab universis per vices occupantur, quos mox inter se secundum dignationem partiuntur; facilitatem partiendi camporum spatia præstant. Arva per annos mutant et superest ager: nec enim cum ubertate, et amplitudine soli labore contendunt, ut pomaria conserant, et prata sepiant et hortos rigent, sola terræ seges imperatur (De Moribus German.) And in Ireland, Hume informs us, the land on the death of any person was divided among the males of the sept or family, both bastards and legitimate: and after partition made, if

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place annually, for the purpose of adapting it to the number of individuals, in which there might be an increase or diminution, from any addition or loss of territory, that was perpetually varying with the revolutions to which this warlike people was daily subject.

The same principle was not overlooked in the laws relative to succession in the very first days of Rome. The Roman legislators immediately discovered the necessity of multiplying in a nation the class of freeholders, and also that of their preservation. To arrive at the first object of their intention, each citizen had an allotment of a certain portion of land, and to obtain the second, they regulated the modes of succession and inheritance. They allowed of only two kinds of legal heirs; the children and descendants who lived under the father's power, and were termed

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any of the sept died, his portion was not shared out among his sons; but the chieftain at his discretion made a new partition of all the lands belonging to that sept, and gave every one his share. Hist. of England, c. 47.

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" Hæredes sui," and on their failure, the next relations on the father's side, termed " Agnati."* Their " Cognati," were relations on the mother's side, and excluded from the succession, because the mother had carried her property into another family.

For this reason, the laws did not permit mothers to succeed to the property of their children, nor children to that of their mothers. The property of the mother passed to the " Agnati" of the mother; the property of sons to the " Agnati" of sons;† and, on the same principle, the grandchild on the side of the son, succeeded to the property of the grandfather, though the grandson by the daughter was excluded.‡ This may,

* See the fragments of the laws of the twelve tables in Ulpian Tit. Ult.

† Fragments of the twelve tables. Ulpian, tit. 26. sec. 2.

‡ Instit. lib. 3. tit. 1. sec. 15. The daughter succeeded her father, but after her death the property went to the " Agnati" of the father in preference to her children; and in

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perhaps, seem extraordinary, but the public utility was the first consideration of the laws, and the public utility required that property should remain in families, and that the number of freeholders should not diminish. To multiply them the Agrarian laws were afterwards passed, and it is well known they regulated the distribution of the territories acquired by conquest, one half of which was sold for the benefit of the republic, and the other half distributed by the laws to the poorest citizens. These were the methods employed to prevent too great an increase of persons without property in the nation, and they might have perhaps prevented the misfortune, though they were not able to remove the evil after its existence. The restoration of property directed by the Hebrew legislator, in the present state of things, would increase the number of persons without property, instead of diminishing

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a word, to borrow Montesquieu's expression, "Les femmes succedoient lorsque cela s'accordoit avec la loi de la division des terres; et elles ne succedoient pas, lorsque cela pouvoit la choquer." De l'Esprit des Loix, lib. 27. c. unique.

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it. If in our times the power of alienating property was to be prohibited, it must inevitably accumulate, and the remedy would add to the disease. Circumstances are changed, and the mode of operation must be also changed. The goodness of laws is a relative goodness, and the object of this relation is the state of the nation. In the present condition of Europe, the whole is confined to a few hands, and the whole should be distributed in many.

CHAP. IV.

THE GREAT NUMBER OF GREAT LAND-OWNERS AN OBSTACLE TO POPULATION.

When there is a great number of great proprietors in a nation, and a few small ones, there must necessarily be a great many other persons without property. The space is not immense, and great property in a single person supposes the want of it in many others; in the same manner as in a country where polygamy is

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established, and the numbers of the women do not exceed those of the men, a person having ten wives, supposes nine without any. Great proprietors, therefore, in multiplying the numbers of persons without property, on the principles advanced in the preceding chapters, are obstacles to population.*

It is not, however, by the diminution of the numbers of proprietors alone, that these great proprietors impede the progress of population. It is more obstructed by their improper use of their extensive property. If population increases in proportion to the means of subsistence, and a small portion of land is capable of supplying the wants of a family, what must be the injury to its progress arising from the immense forests sacrificed by these great proprietors to the pleasures of the chace, and the vast tracts of ground occupied by their superb country houses, with their

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* ——— laudato ingentia rura,
Exiguum colito. VIRGIL GEOR. 2. 412.

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numerous offices, which appear intended to astonish with their splendour and magnificence. It is not, certainly, under such management, that agriculture improves. These few great men, surrounded with a crowd of miserable wretches, do not form the happiness of a nation, or constitute its riches. The common interest of the greater part of the community, and the welfare of the greatest number of families, are the true barometer of the prosperity of a state, and the sole instruments of its felicity. It was in this sublime equilibrium, the mediocrity of fortune, that the Greeks and Romans in their early days formed the germ of their population. " It was the base citizen alone," Curio observed, " that considered a portion of land of little value which was able to maintain a single individual."

By what means, then, is the number of small proprietors to be augmented, and the great mass of property diminished, to which time itself has given a consistency that renders it more burdensome to the people who are oppressed by it? Are we to adopt the tyranny of one of the Tarquins,

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who struck off the heads of the tallest poppies in his garden, to reduce them to a level with the rest? God forbid a remedy more destructive than the evil itself should be resorted to! Perhaps, however, a method may be suggested to remove the evil without the violation of any rights, and on the strict principles of justice. Abolish primogeniture, trusts and uses, which are the causes of the exorbitant riches of a few, and the misery of many. Primogeniture sacrifices many younger branches of the family to the eldest brother; uses and trusts, many families to one. Both the one and the other diminish the number of proprietors in the different nations of Europe; both the one and the other are the ruin of its population.

What a multitude of inconveniences spring from one and the same principle! How many misfortunes are to be derived from a single unjust and partial law; The father who can only make one son rich, wishes only for one son, and sees but in the others so many additional expences to his family. He calculates his misfortunes by their numbers. The wish of nature is satisfied

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in its fullest extent by the birth of an heir, and the sacred links of consanguinity are rent in pieces by interest. Brothers, deprived by the eldest brother of the happiness they enjoyed in their paternal mansion, but too frequently see in him only an usurper, who has robbed them of a fortune, to which in their estimation, they had a joint and equal claim. They curse the day which gave them being, and detest the laws which have degraded them.*

So many younger brothers deprived of property, are, consequently, deprived of a power of marrying, which obliges an equal number of the other sex to remain in the same fruitless state of celibacy. In their turn, deprived also of a power of marrying, they are often forced by their parents

* These observations are principally applicable to the situation of families under many governments on the continent, where the younger brothers and sisters are often wholly dependent on the eldest son. In our happier island, though the eldest son may take, by priority of birth, the settled estates of the father or ancestors, yet the younger branches have usually a provision made for them by a charge on the estates.

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to take refuge in a convent, and are there buried for posterity!

Mankind will be hereafter astonished at the strange contradiction between the sentiments of the present political writers, and the laws, the maxims of government, and its statutes. An opposition to monastic institutions has insinuated itself into all the cabinets of Europe, and the diminution of these asylums for indolence and celibacy, is become one of the first objects of their serious attention. They see with a mingled sense of displeasure and regret, the void which the profession of either sex leaves in the population of the country, and they have made great exertions to counteract the mischief, but they have left the fountain open from which it flows. Would the convent or the cloister receive so many individuals, if the eldest son and daughter had not been often solely destined by many great families to perpetuate its name? Would such multitudes of wan and wretched beings be imprisoned, like slaves, within their damp and dreary walls? Would religion itself have to weep so

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frequently over so many of its vestals, the victims of despair? Were those barbarous principles* no longer to govern families, the members of these monastic foundations would certainly decrease, but in the reduction of their members, is it probable there would be a decrease of virtue? These are the fatal effects of primogeniture, and they are more pernicious to the population of a country,

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* The Chinese, Helvetius has observed, from political ideas, and the wonderful population of their country, have authorized the abandonment of infants, who are left to perish, or be received from charitable motives, into the families of strangers. From the horrible famines which at times have desolated their country, and destroyed millions of the species, they consider the principle to be justifiable, and the law reasons in this manner. "J'y sacrifie quelques victimes infortunées aux quelles l'enfance et l'ignorance derobent la connoissance de la mort, en quoi consiste peut-etre ce qu'elle a de plus redoutable." De l'Esprit, c. 13.

I fear there is too much truth in the observation that is added. "La maniere de se defaire des filles dans les pays catholiques, est de les forcer à prendre le voile: plusieurs passent ainsi une vie malheureuse, en proie au desespoir. Peut-etre notre coutume, à cet egard, est elle plus barbare que celle des Chinois."

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because they are so frequent. There is scarcely an individual with any fortune, who does not wish to establish an eldest son. He considers it as the means of ennobling his family by an act of injustice, authorized by the laws, and recommended by the examples of his superiors The numbers, however, of persons without property, increase by such practices, subsistence accumulates in the hands of a few, and the legislature weakly flatters itself, it can encourage population by a few privileges, whilst it supports primogeniture, uses and trusts. It forms a volcano, and foolishly supposes it can restrain its violence by a barrier of glass. It mutilates a great part of society, and to multiply it, exempts the father of a family from a few contributions to the state. Miserable infatuation! Legislators! your blindness and your errors are more destructive than the pestilence! Its ravages accelerate the death of man; your folly prevents him being born.

The first step towards multiplying the number of proprietors, and undermining that vast mass

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which has raised the grandeur of a few on the ruins of many, would be to abolish primogeniture, trusts and uses, which appear to be expressly formed to diminish both the number of proprietors, and the population of Europe.

Another proper measure, would be to abolish the succession of a daughter of the eldest son in preference to his brothers, in the case of a feud. This law originated in the passions of a voluptuous queen, and whilst it transports property into another family, it ruins very frequently a brother to enrich a stranger. The Voconian law* prohibited a female from inheriting, and

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* Cicero, in one of his orations against Verres, has cited a fragment of this law. "Ne quis hæredem virginem neve mulierem faceret." (In Verrem Actionis, 2. lib. 1. 42;) and we may gather from St. Augustin (de Civitate Dei, lib. 3. c. 21.) an only daughter was included in the prohibition. It appears also from Justinian, (Inst. lib 2. tit. 22.) that a similar restriction was laid on legacies, and that a daughter was not suffered to take as legatee what she could not take by descent. The hopes of eluding the Voconian law introduced trusts at Rome,

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modern Europe, which has adopted the very errors of the Roman civil law, has yet abandoned its ancient principles so far, as to prefer, in some cases, the female to the male.

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and legacies were given under this fiction to confidential friends, who were requested by the testator to give them to the persons the law had excluded. This was, however, but a mere request, which could not be enforced, and had only a moral obligation on the virtuous and conscientious. Tully has recorded a case in which even the express intention of the testator was defeated by the villainy of the trustee. "Memini me adesse P. Sextilio Rufo, cum is ad amicos rem ita deferret, se esse heredem Q. Fadio Gallo; cujus in testamento scriptum esset se ab eo rogatum, ut omnis hereditas ad filiam perveniret. Is Sextilius factum negabat. Poterat autem impuné: quis enim redagueret? Nemo nostrûm credebat, eratque verisimilius hunc mentiri, cujus interesset, quam illum, quid id se rogasse scripsisset, quod debuisset rogare. Addebat etiam, se in legem Voconiam juratum contra eam facere non audere, nisi aliter amicis videretur. Aderamus nos quidem adolescentes, sed et multi amplissimi viri: quorum nemo censuit plus Fadiæ dandum quam posset ad eam lege Voconiâ prevenire. *Tenuit permagnam Sextilius hereditatem: unde, si secutus esset eorum sententiam qui honesta et recta emolumentis omnibus et commodis anteponerent, ne nummum quidem unum attigisset.*" De Finibus Bon. et Mal. lib. 2. sec. 17.

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The prohibition also of the power to alienate any family property, is another check to population. If the system of feuds be ever to be combined with the prosperity of a people, with the riches of a state, and the liberty of man, this single prohibition would be sufficient to render it both pernicious and destructive. The supposed interest of the prince would keep a certain portion of the country from passing into any other hands, because a feud can neither be sold, ceded on a perpetual rent, nor alienated.

The most uncultivated land would often be the most productive for the state, if the laws which prohibit the alienation of feudal property had not deprived it of its necessary cultivation, which is always languid and never active unless united with the precious rights of property. Much barren land would be also brought into a course of tillage, many labourers would become proprietors, and if government, by the abolition of this destructive tenure, made a little sacrifice to public utility, it would be the first to reap an advantage from it. If it lost a trifling sum by

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the surrender of its feudal rights, it would be repaid a hundred times by the progress of population and agriculture, which are always in proportion to the progress of property.

Lastly, the wastes and commons, which are no particular property, because they belong to all, tend to diminish the number of proprietors in those countries where the remains of the ancient spirit of pasturage appear through their barbarous codes of law, and still subsist, notwithstanding the certainty of the numerous disorders which they create. Of the obstructions which oppose the progress of agriculture, something will be hereafter said. Exclusive, however, of trusts and uses, primogeniture, wastes and commons, the want of alienation in feudal property, and the laws which in the succession of it, prefer the daughter of the eldest son to his brothers, there is another cause which has diminished the number of freeholders. It is almost universal in Europe, has checked more than any other the progress of its population, and shall be the subject of the following chapter.

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CHAP. V.

THE EXORBITANT RICHES AND INALIENABILITY OF ECCLESIASTICAL PROPERTY AN OBSTACLE TO POPULATION.

THE first sacrifices, according to Porphyry, were herbs. The father of a family assembled his children in a neighbouring field, to render their joint homages to the Deity. The open air was the temple; a few sods of earth the altar; and a bundle of twigs or a few fruits, the sacrifice which man offered to the Author of all Nature. With such a worship, every individual might very properly be the high-priest of his own family.

The natural desire of pleasing the Divinity, afterwards introduced ceremonies; and as they multiplied, the husbandman could not officiate as the priest. Particular places were soon consecrated to the Deity; particular ministers appointed for the care and custody of these places, which required a regular attendance, and the priesthood became a separate and distinct body.

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This body, separated from every domestic occupation, or lucrative employment, must necessarily be supported by the public. The Egyptians, the Persians, Hebrews, Greeks, and Romans,*

* The scripture speaks in many places, and particularly in the book of Numbers (c. 18.) of the offerings to the Levites. Hyde (De Relig. Pers. c. 19.) gives an account of the riches of the Magi, the priests of Persia; and from the remains of the laws of Greece we may easily perceive their manner of providing for the expences of the public worship and the wants of its ministers. In Athens, the law after regulating the offerings of the citizens, directed a portion of them to be applied to the maintenance of the priests. Τα απολειπομενα της θυσιας τοις ἱερευσι λαμβανειν. Petit Leg. Att. lib. 1. tit. 1. And a portion also of the annual crops was destined for this purpose, under the denomination of the "ἱερος σιτος," as may be seen from Julius Pollux (lib. 2. c. 4.) Potter has likewise (Archæolog. Græca, book 2. c. 4.) deduced from a very ancient and universal prescription the payment of a tenth of many things.

Lastly, Dionysius of Halicarnassus (lib. 2.) assures us that Romulus, previous to his distribution of the land amongst the Roman citizens, set apart a portion for the wants of the state, and another for the maintenance of the temples of the gods and their priests; and T. Livy (lib. 1. c. 20.) take notice of funds established by Numa for a similar end.

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settled, indeed, certain revenues on their priests, but there is not any religion, which has carried the just obligation of providing for its ministers, further than christianity, which is more removed than any other from interest and avarice. Devotion first encouraged it, and fanaticism extended it beyond all bounds. The principle, that the ministers of the altar should live by the altar, is too just to be contradicted; but they soon began to preach that the religion which subsisted by sacrifices had the first right to property and riches.*

* The language of superstition has been the same in all religions, all places, and all times. From the eighth article of the Sadder, which is an abridgment of the Zendavesta, we find the sentiments of Zoroaster exactly corresponded with those of the priests of other countries in the days of ignorance.

"It is not sufficient," the avaricious prophet of the Persians observes, "if your good actions are as numerous as the leaves of the forest, the drops of rain, the sand of the sea, or the stars of the firmament. To be efficacious they must have the recommendation of the priesthood. This favour is only to be obtained by liberal donations to your spiritual guides, and a payment of the tenth of your property, the produce of the

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This doctrine, propagated in the days of ignorance, at a time when the seeds of reason were totally extinct, and almost every principle of morality corrupted, made a wonderful impression on the mind of man. The nobles, who had concentrated a principal part of property within themselves, bestowed a share of it on the priests and monks, and even the prince or monarch endeavoured to make his peace with offended heaven by the cession of the spoils which he had extorted from his people.* A flood of wealth poured in

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earth, and in a word, of all your possessions. If the priest is satisfied your soul will escape eternal torments; you will be caressed and honoured in this world, and happy in the next. The priests are the oracles of heaven. Nothing is concealed from them, and they purify and save mankind." Such sentiments, and such language, almost justify the sarcastic remark of a writer in a later period. "*Opes primitiva Devotio peperit sed matrem lasciva filia suffocavit.*" J. Major de Gestis Scotorum. lib. 2. c. 2.

* It is extraordinary, though strictly true, that the indecent clause giving the right of "cuissage and jambage" formed a part of the investment of many feuds belonging to bishops,

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this manner on the ecclesiastical orders, and, exempt from the burdens of society, free from every contribution to the state, and enriched by donations and offerings, they became the greatest proprietors in Europe.

The veil of superstition was at last rent. As the clouds of ignorance dispersed, the errors of fanaticism were successfully opposed, and men clearly perceived the religious opinions of the times, which had been circulated with so much industry and eagerness, were principally calculated to enrich the church. The mischief was,

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abbots, and monks, in different parts of the Roman catholic countries. Is it to be believed that ecclesiastics could have received such investments, and arrogantly insisted on their rights? Is it to be believed that ignorance and superstition should have corrupted so far the purest religion in the world? Such is the tenor of Filangieri's indignant observation; yet it may be questioned if this right were either more immoral or offensive than the "*mercheta mulierum*," in a northern part of Great Britain, which has opened a field for much playful levity, though it seems to have consisted merely of a fine paid to the lord on the marriage of a daughter of his vassal.

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however, already done, and if the future current of offerings and donations could have been then stopt, an immense property was in the hands of a body which could not have a civil death, and had no power of disposing of it.

In this state of things population could not flourish in any nation, since its progress is derived from an increase of proprietors. If trusts and uses, and primogeniture, are obstructions to it, by a diminution of the number, a more fatal wound was given to it by a great part of the property of Europe becoming the patrimony of a single religious family. According to the principles already advanced, population is connected with the progress of agriculture, and neither any advance nor improvements could be expected from incumbents, who could not have any interest in the improvement of their possessions, which they could not transfer to any other person; and it was not to be supposed they would plant or sow for the benefit of posterity, to which they were not united by the ties of blood, or any natural relation whatever. Instead of enriching the

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soil by the expenditure of a part of their transitory income, they naturally studied to make the greatest profit of it, even at the loss of their successors. These fatal and destructive consequences of the inalienability of ecclesiastical property have at last struck the different governments with all their genuine deformity. Philosophy has exerted herself in favour of mankind, and her voice has reached the thrones of kings. She has consulted scripture, and has drawn from its sacred repository the arms with which she has so ably defended the happiness of nations against the avarice of the priesthood. The great abuses of religion have been since successfully opposed, and laws have been passed to remove or to correct them. The intention of the legislature in these different regulations has been to turn the course of the stream, which conveyed such an immense body of water into a single reservoir, where from its want of motion it stagnated and putrified. New acquisitions have been prohibited to the ecclesiastical orders, and wills and testaments have ceased to be such productive mines for the church. A dying father has no longer the barbarous supposed

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power, in his last and feeble moments, of appeasing the wrath of heaven, by leaving to a religious foundation a part of his property, which it ought never to possess, and to which his children have the natural and most indisputable right. Unfortunately, however, the governments of Europe undertook too late to prevent the progress of the evil, and though it may not in future multiply, it still remains in its ancient and original extent. Had they struck at the root of the trunks it might have been extirpated with more ease, and with considerably less tumult. An infinity of disorders, the consequences of mere palliative measures, might have been avoided; the calamities of superstition or ignorance, and the clamours of the clergy, been honourably prevented; and the immense property lying dormant in their hands would have been again thrown into circulation. Even the clergy themselves, a body of men so very necessary to the state, and having a right to the highest respect from every government, would have been the first to have applauded the vigilance and exertion of the laws, when the reform had not been directed to the prohibition of the increase

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of their stipends, but to the nature of ecclesiastical property.

The riches of the clergy have been here only introduced under the opinion of their being a great obstacle to population, but what is to be said of their celibacy?

All the modern political writers have inveighed against it with great severity, and many of them attribute to it the decline of the population of Europe. It is, notwithstanding, probable, that if the numbers of ecclesiastics were reduced, as they ought to be, the void which their celibacy* might occasion in society would not be as considerable as it may be supposed to be. Population has even flourished in the midst of the celibacy of the priesthood.

Phrygia is not in our days nearly as populous

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* The observation applies only to the Roman catholic church, as the protestant minister lies under no such restraint.

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as when the goddess Cebele was its reigning deity, whose priests were eunuchs; and ancient Syria was full of inhabitants, when the ministers of its altars were, if possible, more degraded beings.

In China there are a million of bonzes devoted to celibacy, and yet China is more populous than Europe.

CHAP. VI.

EXCESSIVE TAXES, AND THE MODE OF COLLECTING THEM, OBSTACLES TO POPULATION.

As society possesses advantages, which it extends to all its members, it has also its expences, of which it is just they should bear a part. To this burthen every individual should be obliged to contribute in proportion to the benefit which he receives, and his abilities. Without this due proportion, social order, instead of improving human life, would add to its misery; the mischiefs arising from it would exceed its advantages; and

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the state of society would be effectually the worst of evils.

According to these principles, which philosophy, overpowered by interest, has in vain considered as the leading tenets of moral government, what opinion is to be entertained of the modern system of taxation in most of the European nations? Where is at present this necessary proportion to be found between the person that pays, and the person that receives; between the tax and the fortune of the individual on whom it muſt be levied? Has there been ever a time in which more was paid, and have the advantages reaped from society increased in the same proportion? The manners of the people in many parts of Europe, the miseries of many countries, and the violence with which these payments are enforced in different governments, all attest the extent of the misfortune. Innumerable duties, taxes of every species, on land, its produce, manufactures, merchandize, on importation and exportation, are a few only of the heads of this enormous hydra, which is termed taxation.

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Admitting in the group this confused sketch of taxation in most of the European nations, let us take a view of its effects. If the population of a country bear any proportion to the means of subsistence, is it possible it should make any progress in Europe, when the individual is frequently obliged to substract from his own subsistence, and to deprive his family of part of their daily bread, to raise what is levied on him? In some countries the very grain has been seized by the collector, which was ready to be sown for the future support of a family; and the innocent cottage has been converted into the theatre of distress, injustice, and ferocity. If its unfortunate occupant have not a sufficient sum for the payment of his taxes, poverty is no plea against the law, and a tribe of young helpless children, who cry for maintenance, and add to his difficulties, hold forth no exemption. Arguments are useless. The collector must be paid. The only indulgence that can be shewn is the delay of a few days, and in this interval the cottager works incessantly, reduces his family to a single meal each day, disposes of his goods, and the very bed which lately

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produced a child for the state, and if the whole is not sufficient, the very instruments of his labour. In this manner individuals, in many parts of Europe, are obliged to satisfy the officers of the public revenue, and purchase at this rate the benefit of society.

These are not the romantic and imaginary descriptions of an Ariosto or a Tasso, but facts, of which the prince in many governments is perhaps the only person ignorant. Ministers pretend they are unacquainted with them, and it is the destructive policy of courtiers to keep them at a distance from the throne, that they may not break in upon their dissipation; but the rest of mankind see them perpetually before their eyes, and they distress the philosopher in his retreat, who is too far from the palace to plead with any hopes of success the cause of humanity.

Let us not, however, deceive ourselves. As long as the present system of taxation remains without alteration, and what is levied swallows up the produce of the labourer and of the land which

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he occupies; or, after the payment of his quota, the residue is not sufficient to maintain his family, the population cannot increase, and must certainly decline. Its progress is always in proportion to the means of subsistence; and the axiom is infallible, that "wherever there are the means of subsistence mankind will multiply, wherever they are deprived of it they will decrease." Nature and private convenience act with the same energy in favour of the multiplication of the species, as misery and oppression in its ruin. By the former the swamps of Holland have been peopled, and the province of Pennsylvania crowded with inhabitants; whilst the natives of the new continent, as we learn from Drake, ceased to have any conjugal intercourse, to prevent their descendants being the victims of their avaricious and unfeeling conquerors.

An alteration, then, in the present system of taxation is necessary in Europe, and an alteration is also necessary in its method of collection. It may be argued, however, that taxes are necessary evils—that the wants of government are so great,

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as scarcely to be provided for—that the national debt of most governments proves the assertion—and that there is not a possibility of reducing their present burthens. Absurdity of argument! unjustifiable supposition! What is the want of governments, for which these unsupportable impositions are become a necessary evil? Is it to support a war for the conquest of some territory, under the pretence of some ancient right, formed on a still more ancient usurpation? Is it to throw a fresh ray of splendour on the throne, or to lavish favours on a set of effeminate, luxurious, and greedy courtiers? Would it not be better for a nation to have fewer slaves, and more inhabitants; fewer parasites, and more philosophers? To scatter the treasures of society, and the fruits of public labour and industry, on a few persons, who, far from rendering any real services to the state, are generally the instruments of its ruin, is perhaps a species of injustice in the very person who ought to punish them. Does not the sovereign, who showers down wealth and riches on an unworthy minister, or a favourite who conceals his foibles and betrays his interests, compel the

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people to pay the adulation, fraud, treachery, the destructive counsels, and the vices, which reduce them to poverty and ruin? It is the lamb rewarding with its fleece the person who conducts it to the slaughter-house. In a word, is it from the wants of a state that a hundred thousand men are supported, who exhibit the spectacle of war in the time of profound peace; who, without defending a nation, stop the progress of its population by their celibacy or libertinism; consume its subsistence, without adding to it by their industry and labour, and distress it by the expence of their maintenance, which must be raised on the people? The nation is oppressed, and the progress of its population is obstructed, to support the very scourges of population—and yet these are the wants of states! Would governments be less secure, and nations less peaceable, if the œconomy of the military system of the ancients were revived?

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CHAP. VII.

THE PRESENT STATE OF THE MILITARY ESTABLISHMENTS AN OBSTACLE TO POPULATION.

A million and two hundred thousand men compose the ordinary peace establishment of Europe. They are a million and two hundred thousand men destined to depopulate it in time of war, and during peace they are both poor, and impoverish it by their celibacy. They add but *little* to external defence, and they oppress it at home. Though the fact may appear extraordinary, we have a greater number of troops in time of peace than the greatest conquerors maintained when they made war against all the world. Are people now more secure, or the frontiers of nations more protected? It is an error of calculation. Every prince increases his forces in proportion with his neighbours, and the balance of power is preserved in the same manner as in former ages. A nation which then thought itself safe with ten thousand men, now doubles its military appointments, because the government against which

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it has to protect itself has increased its forces to the same amount. The advantages, therefore, of a greater degree of security are reduced to a cypher, and the excess is only visible in additional expence and a decline of population.

This was not certainly the ancient military system. Neither Greece, when she so gloriously resisted, and in the end so gloriously defeated the whole force of Asia; Rome in her days of freedom;* Philip; Alexander, who measured the

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* The prætorian guards were the first body of the Roman troops suffered to remain in inactivity at Rome. This abuse was only introduced in the decline of the empire, and it hastened its ruin. At their origin these bands consisted of nine or ten thousand men, Vitellius increased them to sixteen thousand, and under Severus they amounted to fifty thousand. Augustus never suffered more than three cohorts of these troops to remain in the capital (Suet. Vit. August. 49;) but Tiberius ordered the whole body to attend his person. Ut simul imperia acciperent, numeroque et robore et visu inter se, fiducia ipsis, in ceteros metus crederetur. (Tacit. Annal. lib. 4. 2) or as Dion Cassius has expressed it, ὡστε τα παραγγελματα και αθρους και δια ταχεων λαμβανειν και φοβερους πασιν, ὡτε και εν ἑνι τειχει οντας, ειναι. Dion Cass. lib. 57. p. 616.

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extent of his conquests by the marches of his victorious phalanx; Attila; the barbarians who dismembered the Roman empire; the Germans who triumphed over Varus and his legions; Timur-Beg; Gengis Khan, who rushed from the bottom of the Corea, conquered one half of China, half of Indostan, all Persia as far as the Euphrates, the frontiers of Russia, Casan and Astracan; nor Charlemagne, who opposed the united powers of Europe to extend the limits of his kingdom and found the popedom, had ever the idea of continuing in time of peace the troops they employed in time of war against the enemy. The citizen became a soldier when the state had occasion for his services, and ceased to be a soldier the

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This was, however, a fatal step. It decided the fate of the mistress of the world, and left not a shadow of liberty remaining.

Exclusive of these prætorian cohorts the Romans had undoubtedly other troops, but they were constantly on service in the provinces, generally encamped, and almost always in motion, either to extend the Roman conquests, or to defend them.

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moment those services were no longer wanted.* This system of military œconomy, adopted in every age, and almost in every nation, was for the first time, after the fatal example of the Roman tyrants, abandoned under the reign of

* The ancient nations were more free than the modern ones, because they were armed nations. Every individual was a soldier, the camp was the city, and the arms were in his hands which secured his liberty. In general he defended his country at his own private expence. In the bright days of Rome the use of arms was indeed reserved for that class of citizens who had property to defend, and necessarily an interest in the welfare of their country. Dionysius of Halicarnassus (lib. 4) explains the circumstances of the Roman soldiery, and the poorest of them possessed a considerable sum for those times, when specie was so scarce. In the Grecian states every individual was under the necessity of serving, except he was deprived of this honour by the laws, or his services were dispensed with for some privilege, on account of his age or some other requisite. (Æschines in Ctesiphontem.—Demosthenes in Timocratem). The Carians were the first people of Greece who served for pay, and in the days of freedom so much contempt was attached to it, that the term of a Carian or slave was holden in the ancient Greek to be synonimous. Pericles introduced the practice of paying the troops of Athens during war. Potter's Archæologia Græca, vol. 2. 8.

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Charles VII. in France. Taking advantage of the reputation which he had acquired from his victories over the English, and of the impression the fears of such a desperate enemy had made on his subjects, this artful prince succeeded in the enterprize, which his predecessors had never the courage to propose. After disbanding the rest of his troops, he retained nine thousand cavalry, and sixteen thousand infantry, under the pretence of having an army always ready to repel any unexpected invasion which the English might attempt to make.*

This innovation, which gave the first wound to the civil liberty of France, produced an entire revolution in the military system of the rest of Europe. Every prince considered himself reduced to the necessity of defending himself against a nation in perpetual arms; but instead of uniting in a general confederacy, and obliging Charles VII. to disband his troops, the example was imme-

* Robertson's Hist. of C. V. vol. 1. 115.

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diately followed. This system of a standing army was instantly adopted in all the European nations, and they armed themselves, not for the purposes of war, but peace.

This extravagance, which originated in France, increased afterwards in the same kingdom, and spread by contagion through the whole of Europe. We owe to Louis XIV. the multitude of troops which has converted in some measure Europe into a species of winter quarters, where the soldier forages, lives in idleness and waste . To maintain this immense and useless multitude Europe is oppressed and its population languishes. The subsistence of the public is applied to support a million two hundred thousand idle and unproductive men, who are regularly recruited, and are consequently a continual drain on its population. Such a body is a destructive monster, that devours in every generation a portion of mankind.

Much declamation has been lavished on the celibacy of the clergy in the Roman catholic

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states, who are often infirm and old, whilst that of the troops of Europe, who are always robust and young, has passed unnoticed or been observed with indifference. Whilst, however, the military force of Europe continues on its present establishment, the celibacy of the troops is a necessary consequence.

The days when the feudatory, or the freeholder, was at the expence of the military service, are now no more! The troops of Europe are composed of hired soldiers, who have no benefit but their pay, and that is barely sufficient for their maintenance. How can their wives and children be supported out of it? It is not, however, the celibacy of the troops alone, but the expence to the state of their support, which also obstructs the progress of population, and the obstruction would be even increased, if the soldier's pay was augmented in a manner that might enable him to marry. The troops, therefore, must continue unmarried, whilst they consist of hired soldiers, and they must consist of hired soldiers, as long as they continue to form a standing army. Is it not,

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however, possible for the legislature to correct this evil, and remove this double obstacle to population? Is it not possible for it to imitate or introduce the military œconomy of the ancients, without any danger or risk to a nation and its government?

It is a matter of conjecture if there ever were a time when a standing army was essential for the public security of a people, and the recent introduction of it, appears to strengthen the uncertainty. This at least may be relied on, that, even if there ever were such a time, it is not the present time. In our days the communication betwixt one kingdom and another is so open and universal, and governments have so many eyes perpetually on the watch for their interests and preservation, that a nation cannot fit out a single ship of war without its being known in a few days to the extremity of Europe. Instantaneous invasion, and unforeseen attacks cannot, therefore, possibly take place, and consequently there cannot be the necessity of being perpetually prepared against them. Fears of this kind cannot

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then give any serious alarm, and should not authorize the use of a perpetual or standing army.

The internal security of a state receives even less advantage from such establishments. The safety of a government does not consist in its troops, nor in the soldier, who sometimes joins in the insurrection, when oppression arms the people against their sovereign. Justice, humanity, and moderation are the surest shield against any popular commotions, the firmest support of the throne, and the only weapons a monarch should ever wield. Soldiers and guards, Marcus Antoninus observed, are useless to a prince whose people are satisfied that in their obedience to him they obey both justice and the laws.* A spirit of

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* Ουτε γαρ χρηματων πληθος ικδεν αυταρκες προς τυραννιδος ακρασιαν, ουτε δορυφορων φρουρα ικανη ρυεσθαι τον αρχοντα, ει μη προυπαρχοι ἡ των υπηκοων ευνοια· μαλιστα δε εκεινοι εις αρχης μηκος ακινδυνως πλασαν, οσοι μη φοβον εξ ωμοτητος, ποθον δε της αυτων χρηστοτητος, ταις των αρχομενων ψυχαις ενεταξαν. Herodian. lib. 1. 8.

Sallust also observes, " Non exercitus, neque thesauri

sedition cannot make any progress in a happy nation, or under a mild government, and the whole body of the people would rise in concert to suppress it. Is it, therefore, necessary to raise up banks against ideal and imaginary torrents? Would it not have been more advantageous for the princes, who are now no more, to have been as just from interest, as the present reigning monarchs of Europe are from their private and inherent virtues? Without the prætorian guards could Tiberius have proscribed one half of the Roman people, or Caligula have given occasion to lament the death of his predecessor, and left the existence of the senate scarcely but a name? An endeavour to discover the means for the security of oppression would be an abuse of the science of politics and of authority. We will leave to Machiavel the discussion of this outrageous subject, which if there had not been a doubt of his intentions, would have blasted

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præsidia regni sunt; verum amici quos neque armis cogere, neque auro parare queas: officio & fide pariuntur. Bell. Jugurth. c. 10.

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for ever his character and reputation. Let us study to protect the public happiness, rather than to defend the oppressions of a despotic government.

A prince with arms always in his hands may undoubtedly become, whenever he pleases, the master of an unarmed people. But is this his real interest? From experience as ancient as society, we learn a different lesson. Absolute dominion, unlimited and boundless authority, which many princes have possessed, or wished to possess, or that species of earthly omnipotence, which a corrupt minister has often considered as the end of government, which flattery has applauded, superstition sanctified, and mankind have sometimes foolishly defended, is no other than a two-edged sword, that always wounds the idiot who seizes it.

Augustus, surrounded by the prætorian cohorts, and persuaded of the fidelity of the legions, saw notwithstanding in the extension of his power reasons for fear and apprehension. He knew that under their protection he was perfectly se-

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cure from open violence, and public insurrection; but he could not guard himself against the private dagger of a determined republican. He knew that the Romans venerated the memory of Brutus, and had been loud in their applauses of his virtue, and he found the only security of his power in its apparent diminution. From interest he had been first an enemy to the republic, and interest afterwards determined him to declare himself the father of his country.

It would be happy for princes were they persuaded that their best security is their virtue, the affections of their people, the moderation of their government, the wisdom of their laws and their religious observance of them, for nothing is more certain.* Without their powerful support the

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* Qui sceptra duro sævus imperio regit
Timet timentes, metus in auctorem redit.
SENECA.—Œdipus, act 3. 705, 706.

The miserable state of a tyrant has been likewise finely painted by a Latin historian. "Equidem ego cuncta imperia

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tyrant must rely on a band of mercenaries for his defence against an injured and irritated people; but who is to protect him against his own protectors? His doom is to be their slave or victim. To be adored in appearance by his subjects, he must adore in reality his guards. On their caprice depends his veneration as a deity, or his execution as a criminal. If we turn to the history of the Roman emperors, we have many proofs of the observation. Their statues were adored, fear and adulation prostrated themselves before them; but these statues were afterwards crushed into a thousand pieces, the divinity disappeared, and adoration was changed into contempt; as soon as the tyrant's assassination had released the public from its fears and apprehensions. Even the prætorian bands, who contri-

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crudelia magis acerba, quam diuturna arbitror, neque quemquam a multis metuendum esse, quin ad eum ex multis formido recidat: eum vitam bellum æternum atque anceps gerere; quoniam neque adversus, neque ab tergo aut latebris tutus sis: semper in periculo aut metu agites. Ad Cæsar. de Repub. ordin. ep. 2.

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buted to his elevation, frequently deposed him, and as they were the whole support of the throne, they stained it with blood as often as they defended it. Insolent from their authority, the tyrant trampled without hesitation on the senate, the people, and the laws; but whilst the people trembled at him, he trembled in his turn at the troops that surrounded him, and at last perished by their hands. They raised him, and they destroyed him; they made him every thing, and nothing; and the medals, the statues, and divine honours, were those of the prætorian cohorts rather than of the phantom whose name they bore.

The mischief, then, to a state from the obstruction to its population by the public incontinence, the idleness and celibacy of a standing army, exceeds the advantages to its internal or external security.

The progress of knowledge has at last reached the inmost recesses of the palace, and the enlightened policy of reason has taught almost every government that the happiness of the subject

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should determine the use of power. Princes begin to be themselves convinced that force is an instrument which may sometimes govern slaves, but that the laws, moderation and benevolence are the only ties which can unite the true patriot to his sovereign. Under the impulse of these sentiments a reform may one day be introduced, which may change the whole face of Europe.—The inutility of an immense standing army will be seen, and the nation which has the wisdom or the courage to carry its reduction into execution will first feel the wonderful advantages to be derived from it. A reduction of the land forces of a state will likewise enable it to defend with greater ease and more success the common territory of all nations, though power has left it under the dominion of a few. This territory connects the different people on its borders, opens to them all the advantages, and exposes them to all the dangers, from the adjoining nations; it is the territory on which every state ought to maintain a force sufficient for the preservation of the general liberty, which is the only external law it should endeavour to establish, and this territory is the sea.

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On the reduction of the land forces of a government its marine would rise. The former, it has been observed, tends to the misery of a nation without adding to its defence; the latter, in the very act of defence, instead of impoverishing, enriches it. A reduction of a standing army would not expose the safety of a people to any risk; and it would destroy two great obstacles of population, the celibacy of the troops, and the celibacy likewise which the expences of those immense standing armies occasion in the rest of society. From this double benefit a third would also follow. It would weaken the resistance of another obstacle, which contributes at present no less to impede the progress of population. This is the public incontinence, and its influence always corresponds with the degree of celibacy in a state and the national poverty.

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